

SUMMARIZED
RECORD OF TRIAL
(and accompanying papers)

Gary P. Pittman
(Name Last, First, Middle Initial)

(b)(6)
(Social Security Number)

Sergeant
(Rank)

HqBn, 1st MarDiv
(Unit Command Name)

USMC
(Branch of Service)

Camp Pendleton, CA
(Station or Ship)

By

GENERAL **COURT-MARTIAL**

Convened by

Commanding General
(Title of Convening Authority)

Marine Corps Base
(Unit/Command of Convening Authority)

Tried at

Camp Pendleton, California,
(Place or Places of Trial)

on 29 Apr; 28 Jun; 8, 28
Jul; 9, 17, 23, 27, 31
Aug, 1-2 Sept 2004

ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY (SPCM)/JAG (GCM)
RCM 1111 and 1112, MCM, 1984)

| UNIT COMMAND NAME | LOCATION OF JUDGE ADVOCATE OR GENERAL COURT MARTIAL CONVENING AUTHORITY JAG | DATE RECORD RECEIVED | | | | | | | | | | | | |
|--|---|----------------------|--------|------|---------|---|--|--|---|--|--|--|---|--|
| <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">ACTION</th> <th style="width: 15%;">DATE</th> <th style="width: 45%;">REMARKS</th> </tr> </thead> <tbody> <tr> <td>FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact; to file</td> <td></td> <td rowspan="4"></td> </tr> <tr> <td>OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file</td> <td></td> </tr> <tr> <td>Acquittal or sentence set aside (see remarks), to file</td> <td></td> </tr> <tr> <td>COPIES OF CMO DISPOSED OF IN ACCORDANCE WITH DEPARTMENT REGULATIONS</td> <td></td> </tr> </tbody> </table> | | | ACTION | DATE | REMARKS | FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact; to file | | | OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file | | Acquittal or sentence set aside (see remarks), to file | | COPIES OF CMO DISPOSED OF IN ACCORDANCE WITH DEPARTMENT REGULATIONS | |
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| JUDGE ADVOCATE OR LAW SPECIALIST | | | | | | | | | | | | | | |
| SIGNATURE | RANK | DATE SIGNED | | | | | | | | | | | | |

Vol VII of VII

UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps

GENERAL COURT-MARTIAL
SUPPLEMENTAL DEFENSE
VOIR DIRE REQUEST

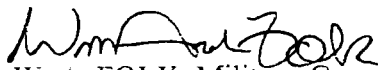
23 August 2004

1. Defense requests that the military judge instruct the members on the issue of reasonable doubt, spillover, accomplice testimony, and a limiting instruction regarding the death of (b)(6) prior to en banc voir dire of counsel.
2. The defense requests wide latitude in questioning prospective members in regards to matters covered under the member's questionnaire.
3. The defense in the above captioned case requests to ask the following questions of the members en banc:
 - a. In the course of this trial you may hear evidence concerning the death of (b)(6) (b)(6) at Camp Whitehorse in An Nasiriyah, Iraq. The accused, Sergeant Pittman is not charged with the death of (b)(6) or of any other Iraqi National. Can you as members judge this case on the facts alone as they pertain to the charges and not be influenced by the fact that this individual has in fact died?
 - b. There may be evidence that is graphic in nature, to include color photographs, can you as members judge this case from the facts alone as they pertain if at all to Sergeant Pittman and not be influenced by the nature of graphic photographs of the deceased.
 - c. You will hear a limiting instruction from the military judge concerning your responsibility as members with regard to (b)(6) death; do all of you feel comfortable with following the court's instruction?

Respectfully Submitted,



J. TRANBERG, Civilian Counsel



W. A. FOLK, Military Counsel

APPELLATE EXHIBIT

LXXXI

PAGE 1 OF 1

BASE/H&S SPT BN

CWO2 N.L. MATESIC -
CWO2 E. G. BRAYMAN - 64 2107
CWO3 B. S. BAGGIANO
1LT M. A. ALLEN -
1LT M. A. ANDERSON
CAPT C. LOGAN - 5 3144
CAPT L. P. GOSHEN
LTCOL G. S. THOMAS
LTCOL M. L. SAUNDERS - 7437

1st Col Randall
Maj - Bagliasso
CWOs Chargo

SOI

LT Col M. J. TOAL - prelude 1st
1LT B. J. SCHULTZ - TAD not available
1LT R. S. MAIDENS
1LT J.J. ROMA - prelude
1LT J.J. BACKUS
1LT J.J. BAGGIANO
CAPT D. R. CULLINS - ? when is it
CAPT D. A. CALDWELL, JR. prelude
CAPT B. W. ROEMER - prelude
CAPT M. W. RYAN - prelude
CAPT J. T. BROOKS
CAPT GILBERT
Capt Cunningham

AA SCHOOLS BN

CWO2 M. E. DUMAS
1LT C. J. THOMAS

SEC BN

COL. C. E. SHELTON

RES SUPPT BN

COL. H.T. WILLIAMS
LTCOL J. C. MORRIS
1LT E. J. BERG
CWO4 R. S. MURLLESS, JR.

APPELLATE EXHIBIT

PAGE 1 OF 1

RESPONSIBILITY

GENEVA CONVENTION

APPELLATE EXHIBIT

XXVII

PAGE

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OF

13

SGT PITTMAN'S BACKGROUND

FUNCTION OF CAMP WHITEHORSE DETENTION FACILITY

APPELLATE EXHIBIT LXXXIII

PAGE 4 OF 13

MR.

(b)(6)



SHEIK

APPELLATE EXHIBIT LXXXII

PAGE 6 OF 13

OTHER IRAQI EPWS/DETAINÉES

WITNESSES

- Dr. Solis

- Maj (b)(6)

- SSgt (b)(6)

- PFC (b)(6)

- Cpl (b)(6)

- SAgt (b)(6)

- Col (b)(6)

WITNESSES (Cont)

(b)(6)

• Sgt

(b)(6)

• LCpl

(b)(6)

• SSgt

(b)(6)

• Sgt

(b)(6)

• LCpl

(b)(6)

• LCpl

(b)(6)

• LCpl

WITNESSES (Cont)

(b)(6)

• LCpl

(b)(6)

• LCpl

(b)(6)

• LCpl

(b)(6)

• Cpl

WITNESSES (Cont)

(b)(6)

- LCpl

(b)(6)

- LCpl

(b)(6)

- Sgt

(b)(6)

- LCpl

(b)(6)

- LCpl

WITNESSES (Cont)

- LCpl

(b)(6)

- LCpl

(b)(6)

- LCpl

(b)(6)

- HM3

(b)(6)

- Mr.

(b)(6)

- Mr.

(b)(6)

TIMELINE

| | | |
|--------|-----------|--------|
| 3 June | 1200-1900 | (b)(6) |
| | 1900-0000 | |
| 4 June | 0000-0400 | |
| | 0400-0800 | |
| | 0800-1200 | |
| | 1200-1600 | |
| | 1600-2000 | |
| | 2000-0000 | |
| | 0000-0400 | |
| | 0400-0800 | |
| 5 June | 0800-1600 | |
| | 1600-2000 | |
| | 2000-0000 | |
| 6 June | 0000-0400 | |
| | 0400-1800 | |
| | 1800-2000 | |

APPELLATE EXHIBIT LXXXII

PAGE 12 OF 13

AE LXXXIV pgs 1-3 Removed under (b)(6)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

MAJOR

(b)(6)

1. FROM THE TIME EPWC WERE FORCED OFF TO WHITEHORSE TO THE TIME IN-PROCESS COMPLETED, HOW LONG DID IT TAKE TO PROCESS AN EPWC?
2. WHAT WAS THE AVERAGE TIME EPWC STAYED AT WHITEHORSE?
3. HIGHEST NUMBER OF EPWC AT ONE TIME?
4. NUMBER OF MARINES NEEDED TO MAN WHITEHORSE FACILITY?
- 5.

CARL SWELTON, JR.

MEMBER'S PRINTED NAME

Carl Swelton, Jr.

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| TC | OBJ | 39A | NO | OBJ |
| | | | X | |
| DC | | | X | |

APPELATE EXHIBIT LXXXVI (86)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

(b)(6)

MAS

1. How many hours a day did you spend at the camp?
2. What part of the camp did you carry out your duties as OIC from?
3. ~~was there~~ ^{did} were there any roving guards used in the camp?
- 4.
- 5.

CAPT D.R. COLLINS
MEMBER'S PRINTED NAME

Doug Collins
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| TC | OBJ | 39A | NO | OBJ |
| | | | X | |
| DC | | | X | |

APPELATE EXHIBIT LXXXVII (87)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

(b)(6)

MAJOR

1. Can you describe more specifically what EPW Handling, ROE, Law of War, and/or Geneva Convention Training your battalion received prior to deploying?
2. How frequently did you personally supervise inprocessing? Other officer supervision?
3. How frequently did you personally supervise or spot-check guard duties during night shifts? Other officers?
4. Did you ever see Sgt Pittman or any other Marine of 2125 hit, punch, strike, kick or in any way mistreat a detainee? If so, what were the particulars?
- 5.

Robert W. Sprague Jr.

MEMBER'S PRINTED NAME

Robert W. Sprague Jr.

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT LXXXVIII (88)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

(b)(6)

MAY

1. WERE ANY ~~ORDERS~~ ORDERS, PROCEDURES, INSTRUCTIONS, LETTERS OR INSTRUCTION, ETC. EVER PUT IN WRITTEN FORM BY 28 MAY 03 ~~IF SO, WHAT~~ IF SO, ~~WHAT~~ IDENTIFY THEM.

~~THAT~~ THAT PERTAIN TO THE OPERATION OF THE DETENTION FACILITY?

2. DID YOU, AS THE OIC, EVER ADMONISH, COUNSEL OR TALK TO ANY OF YOUR SUBORDINATES BECAUSE ANY ONE OF THEM USED VIOLENCE AGAINST A DETAINEE OR SUSPECTED [^] OF USING VIOLENCE? WAS

3. HOW MANY MARINES (AVERAGE) WORKED AT / OR WERE ASSIGNED TO THE DETENTION FACILITY?

DUDA, JOHN S.

MEMBER'S PRINTED NAME

[Signature]

MEMBER'S SIGN.

4. WHAT WAS SET PITTMAN'S REACTION WHEN THE DETAINEE GRABBED HIS KNIFE?

OBJ 39A NO OBJ

TC \longrightarrow No obj to 1 to 3, but obj to 4.

DC X NO OBJ to any

APPELATE EXHIB L X X X / X
(89)

1-1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

MIAS (b)(6)

1. WHAT TURNOVER DID 2125 REG GUARDS RECEIVE FROM THE MEU?
2. WERE CORPSMAN STATIONED AT ^{CAMP} WHITEHORSE?
(ie. STAY OVERNIGHT AT THE CAMP)
- 3.
- 4.
- 5.

CAPT GILBERT
MEMBER'S PRINTED NAME


MEMBER'S SIGNATURE

OBJ 39A NO OBJ
TC X
DC X

APPELATE EXHIBIT XC (90)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

(b)(6)

May

1. When asked about whether or not Sgt Pittman had used force or struck detainees, you responded "not inappropriately." That implies there were instances of physical contact witnessed by you. (a) Can you describe them?
(b) What were the reasons for the strikes or other physical contact? (from what you could see regarding the circumstances)

4.

5.

Robert W Sprague Jr.
MEMBER'S PRINTED NAME

Robert W Sprague Jr.
MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT

XCI (a)

1-1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

SSgt (b)(6)

1. WAS (b)(6) Covered in feces and naked
when you were called out of the Rack at 0100
6 Jun
2. From the alert until (b)(6) was found dead
was Sgt Pittman on duty in the detention facility.
3. Who ordered the sleep deprivation? Which officers?
- 4.
- 5.

Col J. J. Cochran
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT X C 11 (92)
1-1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

SSgt

(b)(6)

1. In the conversation with May ^{(b)(6)} were the specific techniques of punching, kicking, or palm striking mentioned or discussed? If so, please describe the specific guidance passed.
2. How many times, if any, did you see Sst Pittman in particular punch an EPW? Palm strike an EPW? Kick an EPW/detainee (whether "necessary" in your interpretation or not)
3. Did you ever see Sst Pittman punch, strike, or kick Mr. ^{(b)(6)}? If so, please describe these instances.

4.

5.

Robert W. Sprague Jr.
MEMBER'S PRINTED NAME

Robert W. Sprague Jr.
MEMBER'S SIGNATURE

| | | | |
|-----|-----|----|-----|
| OBJ | 39A | NO | OBJ |
| TC | | X | |
| DC | | X | |

APPELATE EXHIBIT X CIII (43)
1-1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt (b)(6)

1. Were you issued any arabic "cheat sheets" or quick reference cards for the purpose of dealing with Iraqis?

2.

3.

4.

5.

CAPT D.R. COLLINS
MEMBER'S PRINTED NAME

Douglas Collins
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT XCIV (94)

The Article 32 Investigation was called to order at 1219,
26 January 2004.

IO: This Article 32 will come back to order. All parties who
were present when the court recessed are once again
present. The time is 1219.

Captain McCall?

Staff Sergeant (b)(6) USMCR, was called as a
witness by the government, was duly sworn, and testified as
follows:

DIRECT EXAMINATION

Questions by the government:

Q Can you please state your full name for the record.
A Staff Sergeant (b)(6)

Q And can you spell your last name.
A (b)(6)

Q And you are a Staff Sergeant on active duty in the
United States Marine Corps?
A Currently off active duty right now; reserve status,
sir.

Q Okay. You are in reserve status right now?
A Yes, sir.

Q And in your reserve status, are you on active duty?
A Right now? Yes, sir.

Q And what unit are you with?
A Second Battalion, Twenty Fifth Marines, Headquarters and
Service Company.

Q Can you please, very briefly, describe to the
investigating officer your background so far in the
Marine Corps?
Yes, sir. From the beginning or --

Q From the beginning.
A I joined the Marine Corps in May of 1988. I went in as a 0341, which is a mortarman, infantry unit. I was called up for active duty for active duty for Operation Desert Storm -- Desert Shield/Desert Storm in '91. I returned back to reserve status and continued on with Weapons Company, 2d Battalion, 25th Marines as a mortarman until 1995, approximately, when I was assigned as the battalion career planner. From that point, I did that duty until approximately 2000. And we got reassigned -- or activated in 2002 for Camp Lejeune.

I was assigned as a battalion substance abuse control officer at that point. And then for that one year period at Camp Lejeune, and we got deactivated and activated again for Operation Iraqi Freedom. And I went back to my 03 duties once I get promoted as a staff sergeant then I became an infantry unit leader and was utilized as such for Operation Desert Storm -- I'm sorry. Operation Iraqi Freedom, and assigned as the Staff NCOIC at the prison camp at Camp Whitehorse.

Q Okay. First, I need you 'to speak up even more, staff sergeant. We have to make sure that the recording picks up everything you're saying. All right?
A Check, sir.

Q Let's talk about -- you indicated that you were reactivated in 2003. Is that correct?
A That is correct.

Q And what was the nature of the reactivation?
A For Operation Iraqi Freedom.

Q All right. When the battalion was reactivated for Operation Iraqi Freedom in 2003, where did the training occur? Was it a work-up?
A It was a short work-up at Camp Lejeune, North Carolina.

Q All right. How long were you at Camp Lejeune for?
A Approximately two to three weeks.

Q And in that two to three week period, were you preparing to deploy then in support of Operation Iraqi Freedom?
A Yes, we were, sir.

Q Did you receive any training with respect to handling of enemy prisoners of war?

A We received a short period of instructions on EPW handling, which was conducted by Major Paulus.

Q All right. When I say we, what specific unit were you in within the battalion?

A Headquarters and Service Company.

Q And who is -- what was Major Paulus's relationship to that company?

A He was the executive officer of H&S Company.

Q Now, you indicated you received periods of instruction? Yes, sir.

Q How many times did you receive these periods of instruction?

A From what I recollect, there was one period of instruction.

Q One period of instruction. And it was taught by whom?

A Major Paulus.

Q And who did he teach it to?

A To H&S Company.

Q The entire company?

A I believe so. At different times, obviously, you know, you can't accommodate everybody at the same time.

Q Do you recall if Lance Corporal (b)(6) was part of that?

A That particular instance that I was there, I can't say if he was or not. I mean, I don't know if he was there at that time, but we all received it.

Q And was Lance Corporal (b)(6) part of H&S Company?

A Yes, he was, S-1 section.

Q But you are not sure if he was actually physically present that day?

A The time that I received the period of instruction, no, I cannot say if he was there.

Q How about Sergeant Pittman. What company was he with?

A He was also with Headquarters and Service Battalion.

Q And do you recall whether or not Sergeant Pittman was present for a period of instruction in which Major Paulus taught EPW handling?

A Right. Not that I recall. I don't recall exactly who was there. It was just a big group. I'm not going to say who was and who was not. I can't recall.

Q Now, let's talk about what Major Paulus actually taught that day. You recall the specifics of the class?

A Yes.

Q What was it that he was teaching to H&S Company?

CC (Mr. Zimmermann): Mr. Investigating officer, just at the beginning on the first witness, if you could tell us how you want to handle this. Obviously, without some proof that Lance Corporal (b)(6) was there, any testimony about what happened there is completely irrelevant to this Article 32. Do you want me to stand up and say, "not relevant for Lance Corporal (b)(6) or?

IO: Sure, if you have an objection, you should.

CC (Mr. Zimmermann): We object to anything without some indication that Lance Corporal (b)(6) was there is irrelevant to the investigation involving him.

IO: Your objection is noted.

I disagree with the objection though. I think it is relevant. There may be other witnesses who may come testify, I don't know, that he was present. This witness is just going to give the nature of the instruction. He has testified that everyone received the instruction. He just doesn't know if he was present during the period of time that he received it.

CC (Mr. Zimmermann): It was one class.

IO: That is what I have from his testimony so far. It sounds like there was more than one class offered to different groups of students. That's what I understood him to say so far. Is that correct, Staff Sergeant (b)(6) there was more than one class offered?

WIT: Yes, sir, I believe so. There was more than one class.

DC (1stLt Folk): We make the same objection as it relates to Sergeant Pittman, sir.

IO: Noted.

Questions by the government:

Q Now, Staff Sergeant (b)(6) what was it that Major Paulus taught in this period of instruction?
A Laws of war and EPW handling, sir.

Q Do you know or do you recall if he cited the Geneva Convention in any way?
A Yes. He mentioned the Geneva Convention as it pertains to the laws of war.

Q Do you recall, if at all, whether Major Paulus discussed use of force with respect to detainees and EPWs?
A The use of force as far as what, sir?

Q Excessive force versus necessary force. Did he define those at all? Did he talk about them in any way?
A When it comes to the application of the laws of war, as Marines we're supposed to abide by Geneva Conventions. And situation dictates, but when you abide by the Geneva Conventions, you're supposed to treat EPWs in a humane way as well as other combatants.

Q Now, you just indicated you're supposed to treat EPWs in a humane way?
A That is correct.

Q Were you taught that by Major Paulus in the class that day?
A It was in a specific topic of the class. It was just part of the, you know, proceedings that you have to do on the Geneva Convention as rules.

Q Let me ask that question again: Were you taught to treat EPWs -- was that one of the topics that was discussed in a humane fashion by Major Paulus during that class period?
A Yes, sir, absolutely.

Q How long did the class last?
A An hour and a half, between an hour and a half.

Q And where was it conducted at?
A It was outside -- outdoors because of the size of the class, outdoors next to a gymnasium, I recall.

Q Was there a sign-in sheet for H&S Company Marines. Do you remember?
A Yes. There should have been a sign-in sheet. We always do for any class.

Q Now, you indicated when Colonel Gallo asked you a question. There were more than one period of instruction on the laws of war. Is that correct?
A That specific class, I know there was a schedule of different classes that were going around and because everybody was getting ready to deploy, not everybody could be present at one time to take every class. So I understand that the schedule was given for different sections to attend the different classes in a rotation for that period. I can't really say for sure, you know, that Major Paulus did give that same class another time to somebody else or when or who attempted or whatnot. I can just say on the one that I was present at that moment.

Q All right. Now, you were in Camp Lejeune for a two to three week period of time. Correct?
A Yes, sir.

Q And then you deployed with the battalion?
A Yes, sir.

Q Where did the battalion deploy to first?
A To Kuwait.

Q How long?
A Kuwait city.

Q I'm sorry?
A Kuwait city.

Q You were in Kuwait city. Did the battalion receive ROE briefs? Rules of engagement brief by a staff judge advocate?
A The battalion did. I'm sure they did. I mean, we were --

Q Let me ask you this: Did you receive a ROE brief by a staff judge advocate while you were in Kuwait?
A I can't say specifically that we did.

Q You don't remember. I just want to make sure we're accurate?
A Individually, no, but we were given our objectives as far as mission that we had to conduct.

Q When you say "we," who are you referring to?
A The unit.

Q The battalion?
A Right.

Q But you don't remember the battalion receiving an ROE brief by an SJA or a lawyer in Kuwait?
A No, not in Kuwait.

Q Okay. Did you receive one in Camp Lejeune?
A No.

Q You don't remember receiving an ROE brief at Camp Lejeune either? Did you receive one when you transitioned into Iraq?
A We received a brief on what our mission was and our rules of engagement, not by SJAs like you say --

Q Okay.
A ~~-- but by our CO.~~

Q By your CO?
A Yes, sir.

Q Who is your CO?
A Major (b)(6)

Q And he was the CO of H&S Company?
A That is correct.

Q And in this brief, did he talk about the treatment of EPWs or detainees in this mission brief?
A I don't recall that specifically.

Q Okay. Was this mission brief given in Kuwait?
A Yes, sir. It was more guided towards, like, okay, this is our mission, the specifics of it, and we're going to go into hostile territory, and if somebody shoots at you, shoot back.

Q Now, how long were you in Kuwait before you transitioned into Iraq?
A The unit or myself specifically?

Q Good question. Let's take them one at a time. You yourself?
A Me specifically, I was in Kuwait approximately two and a half weeks, two to three weeks.

Q Now, was the rest of the battalion there with you during that time frame or they left before or after you?
A They departed earlier than myself, probably a week before.

Q And where was the battalion heading when they left before you? Do you know?
A They were heading to the An Nasriyah area as their AO.

Q And is that where you followed them to?
Yes, sir.

Q All right. Now, you get to An Nasriyah after staying in Kuwait for about two to three weeks. Where -- are you in An Nasriyah or are you outside of An Nasriyah? Where are you?
A When I first arrived with the rear party that I was assigned to, to be the staff NCOIC of, we arrived into the City of An Nasriyah and into Golf Company's position within the city.

Q Now, where is Camp Whitehorse with respect -- I'm sorry. Where is Camp Whitehorse in relation to An Nasriyah?
A It's in the outskirts of it, approximately three to five clicks away. Between An Nasriyah and Tallil Air Force Base.

Q Okay. Is that north, south, east, west? Do you remember?
A From what I recall, probably would be southeast of the city.

Q Okay. About how far of a car ride from --
A Whitehorse?

Q -- Whitehorse to An Nasriyah, in a HMMWV. How long
would it take?
A It's not that far, 15, 20 minutes.

Q Again, I'm going to need you to speak up. All right?
A Fifteen, twenty minutes.

Q You get -- you yourself get into An Nasriyah. Did you
At any time move to Camp Whitehorse?
A When we first arrived into Nasriyah, we got there
towards dusk, and it was still very dangerous to be
driving around at certain times of the day. And an
escort vehicles were limited at that time, so we were
asked, or ordered, to stay at Golf Company's position in
the city of Nasriyah until the next morning where we
would be transferred, you know, during daylight hours to
Camp Whitehorse and join the rest of the unit.

Q And is that what you did?
A That is exactly what we did.

Q Now, do you recall what time frame that is or what month
that was in?
A That was early April, sir.

Q First week of April?
A Yes, sir.

Q To the first week of April, you finally make it to the
actual --
A It would have to be the second week of April, sir.

Q Okay. The second week of April. Beginning of the week?
A Midweek.

Q All right. And you actually get to Camp Whitehorse. Is
that correct?
A Yes, sir.

Q Now, what is your job when you get to Camp Whitehorse in the second week of April?

A As soon as we got to Camp Whitehorse, myself and the other Marines that were on that rear party were immediately assigned to the EPW guard force and were sent over to speak to Staff Sergeant (b)(6) who was at that time the Staff NCOIC, to get a quick brief on what our new duties were to be.

Q Okay. Can you describe for me the layout of Camp Whitehorse?

A The layout?

Q The physical layout of the camp. Is it a small camp, is it big camp? How big is the camp?

A It was a pretty good size camp. I would say 3-miles long by 2-miles wide.

Q And is this detention facility you were being assigned to, it's in one portion of the camp?

A Yes, it is, sir.

Q Is it segregated or is it?

A It was separate from -- it was a separate facility within Camp Whitehorse.

Q Did you -- when you first got there to Camp Whitehorse, did you immediately get assigned to the detention facility?

A Yes, I did, sir.

Q Now, what was your role to be within the detention facility?

A It wasn't clearly defined at that moment, sir.

Q Why not?

A Because Staff Sergeant (b)(6) was in charge. So I was, you know, I assumed my role as a staff NCO, but it wasn't like we shared the responsibilities or anything. I was more like, taking care of the guys that had just gotten there with me, the guys that I worked with, prior to arriving at Camp Whitehorse.

Q How many Marines went there with you?

A About 11.

Q And they are all H&S Company Marines?

A Yes, sir.

Q Now, when you first get there, it's just you and Staff Sergeant (b)(6) as Staff NCOs. Is that right?
A Yes, sir.

Q What is the rest of the chain of command within the detention facility at that time?

A I was informed that Major (b)(6) was the officer-in-charge, and there were a few NCOs that were already there, Sergeant Pittman, Sergeant (b)(6) and they had already taken certain leadership role responsibilities.

Q All right. And how big was the total guard force at that point?

A At that point, approximately 18 men.

Q Eighteen. And who were they made up of? Where did these Marines come from? Do you know? Did you know?

A No, sir. All I knew were the Marines that I had arrived with that were assigned to the, you know, to the EPW guard force. The other ones were already there, you know, running the facility.

Q Were they also H&S Company Marines or were they?

A There were H&S Company Marines and some of them were sidelined to H&S and they had come from line companies.

Q All right. Now, how long were you working at the facility with Staff Sergeant (b)(6) for?

A How long was I working with him?

Q That is correct.

A Before he had to part for his operation, approximately three weeks, I would say.

Q And was Major (b)(6) the OIC for that entire period of time?

A Yes, he was.

Q Now, why did Staff Sergeant (b)(6) have to leave?

A Staff Sergeant (b)(6) was diagnosed with a hernia, I believe, and he had to be transferred out to Kuwait and back to the states to get an operation.

Q What role did you assume then when Staff Sergeant (b)(6) left?

The type of role that was not clearly defined, but one that you got to step up to the plate. Being the second Staff NCO there, I took charge of the facility.

Q I mean after Staff Sergeant (b)(6) left, you are the only Staff NCO at the facility. What was your job at that point? What role did you assume?

A To supervise the other enlisted Marines and establish, you know, the continuation of our mission there as the EPW guard force.

TC: Sir, may I have one second, please?

IO: Sure.

Questions by the government:

Q Now Staff Sergeant (b)(6) how long was it before Major (b)(6) stepped down as the OIC of the detention facility? Do you recall?

A How long was he --

Q How long was he in charge for before he turned over the ring to somebody else?

A When Major Paulus took over. I would have to say at least two months.

Q All right. So for the first three weeks, it's you and Staff Sergeant (b)(6) and Major (b)(6). Staff Sergeant (b)(6) leaves and then it's just you and Major (b)(6) for the remaining five weeks until Major (b)(6) leaves the facility?

A Yes, that is correct.

Q And then he takes over and replaces Major (b)(6)?

A Major Paulus.

Q Now, let me take a step back. When you get in there to this detention facility and it's -- Major (b)(6) is in charge and you are first there, what are the rules of the facility in terms of how the detainees are treated and taken care of?

A The rules?

Q Yes.
A We were briefed quickly on how the place was being ran and we pretty much took over what was there existing. Their rules were just simply to take care of prisoners, to ensure that, you know, that they would get fed three times a day, water, and maintain the security of our Marines. But mostly to secure the other Marines in the camp and preserve the security of the prisoners as well, to make sure that they were being contained until released.

Q During this initial time frame, was the use of force, was it briefed to you in terms of how it could be implemented?

A How it was implemented?

Q That's correct.
A We were authorized to utilize deadly force. Obviously, if a prisoner would try to attempt to escape or attack one of us, and we enforced this, obviously, with our weapons. And this was a part of the, you know, the enforcement of deadly force. As far as like any other use of force, nothing was briefed specifically on what you could do or couldn't do.

Q Okay. Major (b)(6) never -- or did Major (b)(6) ever explain to you where Marines that work at the facility, when force other than deadly was to be used or was authorized?

A We were briefed as far as like use of force, to do it whenever it was necessary to make the prisoners comply with our orders.

Q Who briefed that?

A Staff Sergeant (b)(6)

Q Did he brief that to all of the Marines at the facility?

A Yes.

Q Would that include Lance Corporal (b)(6)?
A That's correct. Because he came with me from the rear party.

Q And did that include Sergeant Pittman?

A He was already there, so I don't know.

Q Was he ever present when these briefings occurred about when force was authorized, to include deadly force?
A This was the initial brief that I received when I got there. I don't remember him being present.

Q Okay. So this brief had just occurred right when you checked in?
A When we first checked in is when we got all the, pretty much a quick download of what we were supposed to do and, you know, you have to assimilate that information right there and then.

Q Now, after your initial briefing, did any other briefings occur at the facility the with respect to the use of force. Did you ever sit with a Marine and tell him this is when force is authorized?
A Yes. We had other briefs later on after Staff Sergeant (b)(6) had left. Is that what you are saying?

Q Um-hum?
A Yes, sir. At different points where the senior NCOs would sit down with myself and the other Marine, the junior Marines, and we would go over certain things. As far as the use of force, not to be taken as a, you know, a tool of any type of, you know, abuse or matter into your own hands type of thing. It was just to be utilized whenever a prisoner, you know, would not comply to your orders. Obviously, where it could make them comply, not for any other purpose.

Q Did you ever define for them what you thought excessive force was?

A Define for them?

Q That is correct. Did you ever explain to them what excessive force was?

A Yes, sir.

IO: Excuse me. Explain to whom?

TC: The Marines. Thank you, sir.

Questions by government:

Q Did you ever explain to the Marines that you were having these meetings with after Staff Sergeant (b)(6) left, what excessive force meant, at least to you, since you were the person conducting the brief?

A Yes, sir. It was more -- it was very clear that no guards would, like, take it upon themselves to utilize force just for no reason, or for any other reason just to make them comply to what we had them to do as far as, like, you know, obey the rules of what existed to run the camp in a safety manner.

Q Now, did that come down, the decision to give those briefs to the Marines that were in the guard force, from Major (b)(6)?

A Yes. He was aware of the briefs. I mean, we established that so we would know that nobody was going to get out of hand with any of the prisoners under any circumstances.

Q And was Lance Corporal (b)(6) was he present for those briefings. Do you know?

A Yes, he was.

Q And how about Sergeant Pittman?

A Yes, sir.

Q Now, Staff Sergeant (b)(6) there were different -- when a prisoner or a detainee first come to the facility, there were different phases that they would go through. Correct?

A Yes, sir.

Q Can you explain for me what the typical process would be or procedure when a prisoner or detainee would be brought to the facility from a capturing unit?

A They were not like established phases, sir. They were just the process that we had.

Q What was that process?

A It was a process of receiving a prisoners, which was the receiving phase and --

Q What occurred at the receiving phase? Can you please explain it.

A Yes, sir. First of all, we would get a call -- most of the time we would get a call from a capturing unit through the COC that would receive a prisoner, you know, whatever hours and how many were there. That was like the ideal situation. Sometimes we didn't, but it was fine. We were ready for whoever. And when we'd receive a prisoner, there was a very urgent sense of security when this prisoner would come in. So we would have covering teams being placed at strategic spots where in case a prisoner would want to run or attack one of us, we would be able to neutralize that threat.

Then we had a search team that would typically strip search the prisoner to ensure that that prisoner wasn't hiding any weapons or that could hurt us or themselves. And then there was administrative part of it where we logged in and take note of any personal belongings that a prisoner would have on them, and we would do a full inventory of these items, place them in bags, tagging 'em, acquire in the necessary information from capturing unit on location of the prisoners captured, circumstances, and whatever relevant information there was -- or weapons if they had any, and we would inventory all this and keep it there for a later time or when it was time to release the prisoner.

After the searching phase, then the prisoner would be put into the holding facility and dependent upon the severity of what the prisoner was being accused of, we would segregate them inside the facility. We had, like, little chambers to keep them separate until they had -- to preserve their version of whatever they had to say until they had to move around. So they wouldn't compare stories with other prisoners or whatnot.

Q All right. Take a step back in the process. You indicated that covering teams during the receiving phase, covering teams and search teams were used during this proceeding phase. Is that right?

A Yes, sir.

Q Now, how many Marines made up a covering team?

A It would vary dependent upon the needs at that time. If we received a lot of prisoners, you know, then we would have, obviously, a bigger show of force, as far as our security team.

Q Would that security team be armed?

A Yes, sir.

Q With what?

A With M-16s or M9 pistols.

Q The search teams, what did they consist of?

A Search teams were typically two individuals who were not armed, obviously, just to minimize the threat in case one of the prisoners want to reach and tried to grab a weapon. And most of the time they just had a K-Bar just to cut the cuffs.

Q Who was -- who was the leader of the search teams? Who conducted those searches?

A There was no leaders per se, sir. It was just sort of, like, an established process that we had, you know. It wasn't because of any type of leadership that was given or whatnot. It was just more an experience and a --

Q Who were your most experienced -- who were the most experienced Marines that worked the search detail?

A Certain people got chosen or assigned to the jail facility to help the guard force because of their background in the civilian world. And I understand for a fact that there were a few people selected like Sergeant Pittman and Lance Corporal (b)(6) that had their correctional facility -- correction officers experience back in the civilian world. So they were assigned to the jail because of that experience. And then other Marines that were policemen in the civilian world as well. Since they had a little more experience in dealing with, like, I guess, you know, civilian perpetrators, stuff like that.

Q Did Lance Corporal (b)(6) and Sergeant Pittman, did they conduct, because of their background, the majority of the searches that occurred at this facility?

A Yes, they did, sir. But other people were assigned, you know, respectively, as time went on so that we wouldn't burn these two guys out all the time to receive prisoners. But they had the most experience handling prisoners, so they did it.

Q And who were the other Marines that you recall that you assigned to help alleviate the burden on them?

A One time or another we had other individuals. Just names that come to my head right now would be Sergeant (b)(6)

Q Now, the detainee comes in, the covering team is called, the search team is called. He's first taken into the custody of the detention facility. What is the process of the search? How does the search unfold?

A Well, we explained -- like the minute they are uploaded from the vehicle, sir?

Q That's right.

A We were typically, like I said earlier, we were very concerned about security. When the capturing unit would roll in, we would only allow, typically, that one vehicle that had the prisoners to enter our compound. All the other vehicles that were accompanying -- within the convoy would be asked to wait outside until prisoners were processed. We wanted to minimize, you know, too many people being there at one time in case something went wrong and we wouldn't have to be coerced on each other. When the prisoners were off loaded, we would -- either myself or Sergeant (b)(6) which did most of the administrative process of this, we'd confront whoever was in charge of that detail that was bringing in the prisoners, the capturing unit, so that we could get as much accurate information on the circumstance of capture and any other relevant information.

At that time the prisoner would be off loaded and put into what was called -- what we called the receiving pens, which were built outside the actual barracks where we kept the prisoners. These receiving pens is where we kept the new prisoners until one by one they were strip searched on a wall right outside the actual barracks where we kept them.

Q All right. Now, this strip search in the in processing pen that you had created, this would be conducted by the search team?

A Yes, sir.

Q And would they be speaking English, was there a translator. How did they work the communication barrier?

A Until we got a translator on in the time, we would just talk to them in English.

Q So I ask again. Speak up. Okay?

A The search team would talk to them in English, or whatever little words we knew from our reference, you know, Arabic books that we had.

Q Would they do anything else to communicate with them?

A Sign language.

Q When you say sign language, you mean actual sign language, or like mimicking what they wanted them to do?

A Just body language, sir.

Q Body language. Now, did this present a problem during these indoc phases?

A Yes, it did.

Q In what sense?

A In the sense that there was not only a language barrier, but a cultural barrier between us and the prisoners. And there were times that the prisoners were confused and weren't exactly sure of what we were trying to do at that point.

I guess the strip search process was something maybe shocking to some of them, or maybe they could relate to it in a bad way or, you know, maybe they thought that if they would do that in the same situation, they would be doing it in a different kind of way with the intention of harming. So they thought that that is what we were trying to do to them a lot of the times and that caused problems.

Q Now, you indicated Major (b)(6) was in charge of the facility for about two months and then Major Paulus took over. Is that correct?

A That is correct.

Q Where in this time frame did you start -- where in this time frame did you get a translator who could speak Arabic?

A A Marine translator?

Q Anyone. Anyone, Marine an Iraqi that you brought in from An Nasriyah, whatever?

A Well, sir, you know, as Marines we adapt and overcome and there were times that before we officially -- before Major Paulus officially brought in a translator, there was sometimes we would utilize other prisoners that knew a little English to translate at given times.

Q This cultural barrier that you just described, was this a problem even when Major Paulus took over and was running the facility?

A It was, but not as big as -- 'cause now we had a translator, so it wasn't that prominent. But it was always a problem. I mean, cultural barriers are always a problem, no matter what because we were still getting prisoners with, you know, that would find this process, I guess, shocking to them or whatever.

Q All right. Now I want to keep talking about this receiving phase, but I want to specifically focus on the time period when Major Paulus was in charge of the facility. All right?

A Yes, sir.

Q When you were conducting these strip search or whatnot, was force ever used in any way against an inmate or a detainee?

A Forced?

Q Forced.

A During the receiving phase, you are saying?

Q That is correct. During the time frame that Major Paulus was in charge?

A Specific instances, I don't recall.

Q I know it's a long time ago. Do you remember any times that a guard had to kick, punch, throw a detainee or a prisoner down. Anything like that?

A I recall there was those instances where our search team had to react because of a prisoner, you know, trying to do what you just described, try to run or trying to fight back or object to what was happening, but I don't recall if it was specifically during Major Paulus, you know, time frame when he was in charge or whatnot. But I know that this happened.

Q Staff Sergeant (b)(6) can you define for me what you believe excessive force is?

A Excessive force to me is utilizing physical -- utilizing physical extreme ways to subdue someone.

Q Okay. Can you flush that out for me a little bit. What is that?

A I guess in just simple words, excessive force is going above and beyond what means you need to do to restrain someone.

Q During the time frame that Major Paulus was in charge of the facility, did you ever see one of the guards use what you just defined as excessive force on one of the detainees or prisoners?

A Did I observe?

Q That is correct.

A No, not excessive. Not what I consider excessive.

Q Now, during the receiving phase, you indicated covering teams were present, the search teams were present, either yourself or Sergeant (b)(6) was there to conduct any administrative issue that would come up. Was the OIC of the facility there?

A For most of the time, yes, he was, sir.

Q Let's talk about Major Paulus in particular. During the time that he was in charge of the camp, percentagewise, how much was he present during the proceeding phase?

A Major Paulus, if he was in the camp at that time, if he was physically present in the campgrounds, he made it a point to make sure that I get him on the radio so that he could come down and, you know, be there for the receiving part of it. So I would say 90 percent of the time when he was there.

Q Now, after the receiving phase was completed you indicated they went on to -- What is the next thing that happened. After you've -- You've done the strip search, you've done all the admin, the receiving phase is over. What is next?

A The isolation part.

Q Okay. Let's talk about that. The isolation part. What is that?

A That is when you place a new incoming prisoner into the two cells that we rented as the makeshift jail and segregate them from the other prisoners that were, you know, pretty distant. Preserve them there until the HET team could come down and interrogate them.

Q All right. How does the HET team relate. What is the relationship between the HET team and the isolation phase.

A How do they relate?

Q What is the inner play? What difference does it make that the HET team is coming?

A Because this is critical time that the HET team needs in order to extract as much information from these EPWs without them trying to compare their stories or, you know, trying to come up with different ways to justify why they were caught to begin with.

Q Did they tell you -- was every prisoner automatically put in isolation phase, or it was just some?

A Pretty much every prisoner, yes, sir.

Q And did that order -- who did that order come from that these prisoners or these detainees should be placed into the isolation phase?

A When I arrived at Camp Whitehorse, that was already procedures in place.

Q That was already a procedure in place right when you first checked in with Staff Sergeant (b)(6) and Major

(b)(6)
A Yes, sir.

Q Did -- was HET the team that let you know that this particular detainee was significant in any way or ordinate or?

A After the HET team would interrogate any of the prisoners -- or all the prisoners, I should say, HET team would give us, from time to time, more guidance and say, "Okay. This prisoner, you know, we're still working on him, so keep him separate from the other guys for a little while until we come back again and talk to him." But they knew -- HET team was aware of the isolation phase and they never objected either way.

Q What does HET stand for?
A Human Exploitation Intelligence Team.

Q Now, when the prisoners would go back to the isolation phase, can you describe what would occur, how they would be dressed, or what their condition was?
A When the HET team arrived?

Q No. When you were done doing your receiving phase, you put the prisoner in the isolation phase.
A Yes, sir.

Q What was the condition of the prisoner? What was happening to him?
A He was dressed and he was cuffed and bagged until the HET team arrived.

Q Bagged with what?
A With a sandbag.

Q Cuffed with the flexicuffs?
A Flexicuffs.

Q And what was -- what was the procedure that was used on the prisoners during the isolation phase?
A There was a procedure that was already in place, for whatever reason, as far as, like you're referring to making them stand and sitting down at various times.

Q That's right.
A That's what it was. That is the procedure that was in place.

Q How long did they have to stand up for?
A Forty-five minutes, forty-five minutes at a time and then rest 15 minutes. It was not like a set in stone procedure, but that was the sense of what we were talking about here, you know, having them stand for a certain amount of period and then sitting down for another time period until they were interrogated.

Q And then how long would this last for?
A These would last for -- anywhere -- it depends. If the HET team would arrive, you know, within four hours, then that's what it was. Until the HET team arrived, pretty much.

Q What was the longest time frame you ever saw this procedure conducted for?
A Probably overnight, sir.

Q And how many hours?
A Eight hours.

Q Could it be more than eight hours?
A It could, but I don't remember any exact time frame -- overnight.

Q Now, with respect to the time frame that Major Paulus was in charge, was this 50/10 procedure still in effect? Was it still occurring?
A It was still occurring, yes, sir.

Q And how frequently would it occur, or how frequently -- how frequent would it -- excuse me. How often would it take all night for HET to come to the facility to interrogate the prisoner or the detainee?
A Well, not necessarily. We would receive prisoners during overnight hours, so we could have received a prisoner at, I don't know, 1000 in the morning and the HET team would come that evening.

Q And would they be doing 50/10 all day?
A They would be doing 50/10.

Q We'll call it 50/10.
A Right. For argument sake, but not necessarily that specific time.

IO: You're going to have to explain this to me. You said it was 45/15, now it's 50/10. I get the gist of what he is saying, but --

TC: I'm sorry, sir.

WIT: I'd rather not say, sir a specific time. I just want to say they were standing for a specific time frame and then, you know, sitting down, resting for another time period.

Questions by the government:

Q Okay. I apologize. It's my mistake. And this was happening during Major Paulus's time now?
A Yes, sir.

Q In charge?

A Yes, sir.

Q Would the decision to make a detainee or a prisoner -- would the decision to make the prisoner stand up and sit down for this time frame, was that a decision that was made by the Human Exploitation Teams or by the OIC of the facility?

A Like I said earlier, sir, I can't say either way because it was already in place.

Q Did HET -- did a member of HET ever tell you that with a particular prisoner to start conducting this standing up, sitting down process?

A HET would tell us, not originally, but after they would speak to a prisoner -- they knew about this process to begin with. So they never said "No, don't do that" or either way. But after they would talk to a prisoner or interrogate him initially, if they felt that there was more information they needed -- excuse me -- to get out of this person, then they would sometimes tell us, "Go ahead and keep them up a little bit longer or let them stand for a little longer and continue that until we come back or whatever."

Q And what was your understanding of the purpose for which you were doing this to the prisoners?

A This was just to soften them and make them more, I guess, propensed to give an accurate statement of the reasons for them being captured. It was just an interrogation technique.

Q Get them ready for the interrogation?

A To tire them out and then, you know, have them be an easier interrogation process for the HET team.

Q Did you ever do this for any other reason but to get them ready for the interrogation?

A Yes, sir. It was not done for any other reason.

[END OF PAGE]

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Q What did you do to get him up if he didn't want to stand up?

A Myself, personally, sir or --

Q What did you see others do or what did you do?

A -- there was very simply, you know, they were given, if a person didn't want to stand up after a certain amount of time when his resting period had ended, he was given verbal commands initially, in a firm way so that he knows we're trying to tell him to get up, and typically would be in his own language so he would know, you know. It was the "goom" command, which was to stand up, so that there was no mistake of what we were trying to tell him, you know, ordering him to do.

And if that worked, you know, I would say 80 percent of the time, they would get up. If that -- if they didn't respond to that, then the guard would be, you know, would proceed to physically try to pick him up, you know, to show him once again what is it exactly that we're trying to make him do. And if that didn't work, then the necessary use of force was applied.

Q All right. Let's stop right there. You said necessary use of force was applied. What force did you see applied?

A Soft blows to the body to make the prisoner stand up.

Q What is a soft blow to the body?

A Soft blow is a punch to a soft area of the body.

Q Closed fist or open fist?

A It varied. I would say most of the time it was open fist or a light kick so that he would get up, to his thigh area.

Q And you say to the soft tissue area?

A Yes, sir, arms and thighs.

Q Arms, thighs. How about in here in the rib cage area?

A Not necessarily. If he was sitting down in this position, this is not too exposed for a punch or a strike to make him get up. It's usually -- the physical contact was more meant so that he understands "Hey, we want you to get up. Get up." That kind of thing, not just looking for specific area to hurt the guy.

Q Let the record reflect that Staff Sergeant (b)(6) has kicked the back wall of the witness stand in describing that.

A I stand by soft blows because that is what I observed.

Q Now --

A Now, that is subject to interpretation.

Q -- now, how hard were these punches to the arm or to the thigh area?

A How hard?

Q Right. Was it as hard as the person could do it or swing?

A No. It wasn't a, you know, I'm going to take a Muhammad Ali punch at this guy. No. It wasn't like that. It was, you know, just enough so that he understands, get up, that type of stuff.

Q Did Major Paulus know that this procedure of standing up and sitting, down was occurring at the detention facility?

A Yes, sir.

Q How did he know?

A Because sometimes he would walk in and see the prisoners standing, or he was there when the prisoner was being processed initially.

Q Did Major Paulus know that the use of force was being applied personally to or being told to stand up, sit down for long periods of time?

A Did he know? I'm sorry, rephrase that.

Q Major Paulus, was he aware that the guards were using force on prisoners during this process of having the prisoners stand up for a period of time and sit down?

A The type of force that I described? Yes, he was aware.

Q And how was he aware of that?

A How was he aware?

Q Uh-huh.

A By just verbal knowledge of it. And I can't say -- that's the only way that I can say he was aware, but I can say that he physically what he seen through his eyes, I can't say what he has seen.

Q Did Major Paulus ever express any concern to you that things may get out of hand if you're using force while this isolation phase is occurring?
A Concerned for what, sir?

Q That a guard may get out of hand.
A Yes, he did. He made sure that, you know, obviously, the safety of the prisoners was a big factor for us. And he was very involved in the process of how the jail worked and, you know, and the safety of the prisoners. So he -- and he conveyed to me, you know, to make sure that these blows are not for like abuse purposes, and we made sure that that's what went on, you know. And to use it as a last resort if the prisoners wouldn't want to comply with our orders -- or units, or without commands, I should say.

But we spoke about this so that a guard would not get out of hand and try to strike somebody and, you know, hit him in an area where it's not a soft area no more, it's like the neck or the thorax or anyplace where it could be potentially harmful to the prisoner.

Q Now, you indicated there were times when the prisoner or the detainee would go to the interview with the HET team and then come back and the procedure of stand up and sit down would be implemented again?
A Yes, sir.

Q Did that happen during the time frame when Major Paulus was in charge of the detention facility?
A I don't recall that, sir. I know it happened, but I don't know under which -- under which, you know --

Q Time frame?
A I don't know which time frame it was. Major Paulus or Major (b)(6) I don't recall exactly.

Q All right. So -- well, I think you can actually do it from here. Can you please take a look at. What item is that?

TC: Sir, may I ask that, call it IO 6. I'll mark it when the witness is done.

IO: This diagram that is up on the easel?

TC: That is right, sir.

IO: Well, on the list that was given to me by Captain Francis, there is an exhibit 6 and exhibit 7. One is the diagram of Camp Whitehorse detention facility. Six and seven is a diagram of the detention facility cell. This is six and not seven?

TC: Yes, sir.

IO: Okay.

Questions by the government:

Q Do you recognize it?

A Yes, sir.

Q What is it?

A That is the layout of the EPW facility within Camp Whitehorse.

Q And can you describe, basically, what we're looking at for the investigating officer, the area that says -- let's work our way around. The area that says the holding pen. What was that -- I'm sorry, let's start the in processing pens where it's designated on the map.

IO: Well, why don't we get him to authenticate it.

WIT: Do you want me to go up there and point at it?

IO: If it is fair and accurate then we can get it admitted and then he can do whatever he wants with it, within reason.

Questions by the government:

Q Besides not being to scale, is that a fair and accurate depiction of the layout of the detention facility?

A Yes, sir. Fairly accurate.

IO: Are you offering it?

TC: Well, I will offer it, but I don't think it matters.

IO: No.

TC: I cannot offer it at this time, sir.

IO: Any objection?

CC (Mr. Higgins): No, objection, sir.

DC (1stLt Folk): No, objection, sir.

IO: Mr. Zimmermann, do you have any objections?

CC (Mr. Zimmermann): Captain Studenka can handle this pick or witness. Do you want just one lawyer that is going to do the question and make the objections, or do you want one lawyer to make the --

IO: Well, I often times don't know who is going to do it. So I'll just go with to the lead counsel and we can state the objection, if any.

DC (Mr. Higgins): We don't have any objection.

IO: Then IO 6 will be admitted at this time.

Captain McCall?

CC (Mr. Zimmermann): The wording on the top there, of course, that hasn't been determined yet. That's one of the reasons for this 32, whether a crime has been --

IO: Whether there is a crime scene. So you object to the use of the characterization crime scene?

CC (Mr. Zimmermann): It's the crime part that I want out.

IO: All right. Got it.

It's admitted. I won't consider that word.

Go ahead.

TC: May I continue, sir?

IO: Yes.

Questions by the government:

Q Can you just explain, first, let's just work our way around. What is the dark line that runs around the outside represent?

A These right here?

Q That is correct.

A That is a dark room that was created to isolate the facility and keep any outsiders from entering the facility, unauthorized people, and also to deter any type of -- to make it more difficult for any prisoner who wanted to escape. This was laid with Constantino and barbed wire all around it.

Q For the record the witness is pointing to the west and the burm on the clutch of the compound drawing. Now, let's trace the boldest line on the burm. Is that okay?

A Yes.

Q Now, what does the in processing pen on the inside mean?

A These were the actual receiving pens. Whenever a vehicle would bring in any of the prisoners, they would be off loaded right about here. And depending upon how many we get, we would isolate them here initially and get them ready one by one to be searched by the search team.

Q And for the record, you pointed to two in processing pens which are marked in the middle of the diagram. Where was the prisoner off loading? Can you please point to that again?

A Right in this area here.

Q And for the record, the witness has indicated a circle in between the bottom portions of the in processing pens?

A This actually looks -- it's a little bit inaccurate. These two pens were located directly adjacent to the holding buildings in which this hallway here, or this opening, would continue into the building as well. So it should be shifted a little more so that if you were going to bring a prisoner in, you don't have to be walking him, you know, making too many turns with them in case something goes wrong. You want to bring them as quickly as possible.

Q So what you are saying is the separation between the two holding buildings on the left side of the diagram should line up with the space between the two in processing pens?

A Yes, sir.

Q Now, the two holding buildings that are marked in the diagrams. Who do they represent?

A They represent the actual buildings where we left the prisoners, you know, the holding facility.

Q And which of the two holding buildings would the isolation phase be conducted in?

A Either. Dependent upon how many prisoners we had at that time and how can we rearrange them.

Q And what about the troop building. What does that represent?

A This represents where they'll actually, the EPW guard force billeting is at.

Q And the holding pen?

A The holding pen was something we improved on later on as a means to take the prisoners out at a given time, early in the morning or in the evening, and feed them there and give them an opportunity to walk around and exercise and, you know, stretch out from being in these places.

Q For the record, the witness has indicated two holding pens. Now, the two rectangles there on the bottom left corner of this diagram, what do they represent?

A These two rectangles here represent a ex-Iraqi military head, which is bathroom and shower facility.

Q And what was done there?

A The HET team utilized these two small buildings to conduct their interrogation process. Since it was away from the actual, you know, big holding facility or holding buildings, and it would preserve the testimony of the prisoners.

Q Now, was this the -- was this -- I mean, besides the problems that you've indicated with the space in the diagram, is this the layout of the camp when Major Paulus was in charge?

A Yes, sir.

Q Had improvements been made to it prior to his arriving as the OIC or after his arrival?

A Improvements were being made constantly because we're always thinking of, you know, maybe trying to find out different ways or think of better ways to preserve the safety of everybody in the camp.

Q Do you remember what, if any, improvements made were made when Major Paulus was in charge of the facility to the structure?

A We implemented shower facility, which this became the shower facilities.

Q And you've indicated the in processing pens that are marked on the diagram in the --

A Shower facilities for the prisoners. And we tried to do that at least once a week. That was implemented -- some of the burms were like, you know, improved with barbed wire and stuff when Major Paulus was there. Also the reinforcement of the inner perimeter of the holding facilities for the prisoners, you know, raise up the barbed wire or the Constantino higher so that they could not reach windows in case they wanted to, I don't know, for some reason try to escape or whatnot.

Q And for the record, the witness has circled the holding building in the middle of the diagram. Now, Staff Sergeant (b)(6) what I want to do is show you a series of photographs?

A Yes, sir.

TC: Sir, if I could just ask him to stand right to the left of -- right in front of the witness chair, please.

IO: All right.

What are these now?

TC: These are marked -- what's the title on those?

IO: It's IO Exhibit 8.

Questions by the government:

Q Yes. This IO Exhibit 8, 1 of 13. Take a look at that, Staff Sergeant (b)(6). Do you recognize that?

A Yes, sir.

Q What is that?

A That is the holding pen or what we call the recreational pen, and it's being populated with some prisoners.

Q Now, is this picture during the time frame that Major Paulus was in charge? Do you even know?

A There is no way I would know.

TC: Actually, sir, have these been admitted?

IO: Yes, those have.

Questions by the government:

Q Now, this exhibit 2 of 13. What does this represent?

A This represents one of the holding facilities. This one specifically, I believe.

Q For the record, the witness has pointed to the --

A The --

Q Hold on a second. IO Exhibit 6, the holding building on the left side of that. Right? Go ahead. I'm sorry.

A That would be the most southern building.

Q What is at the back of the diagram. The back of the picture -- what is that by the door?

A Those are, obviously, we utilized those rocks were placed there as to prevent any of the prisoners trying to escape, sir. They were used to block that exit.

Q And picture 3 of 13. What does that represent?

A It's a picture of the same facility, just in a close up level.

Q That is the same cell or holding building?

A Same cell, yes, sir.

Q What does this picture which is marked 4 of 13 represent?

A That represents the other facility, this one.

Q And you've indicated for the record on IO Exhibit 6, the middle holding building on the diagram. Now, am I looking then north down into the troop billet?

A Yes, you are, sir.

Q And what does picture 5 of 13 represent?

A It's a different angle of the holding pen or the recreational pen with some prisoners in there. I believe that is looking southward.

Q And 6 of 13, what does that represent?

A Same view, just different angle.

Q Of the holding pen?
A Of the recreational holding pen, yes, sir.

Q Now, what is this a photograph of. And this is picture 7 of 13?
A That is a photograph of this area right here looking southward into the troop building billeting area, and that was our entrance used by the guard force.

Q For the record, the witness has run his finger along the right edge of the troop building block on IO Exhibit 6 diagram. Now in picture 7 of 13, what are the words that are written to the left of the doorway. Do you see that?
A Right here, sir? Is that what you're talking about?

Q For the record, I'm pointing to the left of the doorway here on the actual troop building.
A I can't make that out, sir.

Q Why don't you walk up to it and see if you can get a better look at it.
A It's fuzzy. I can't see it.

TC: Sir, can I have the witness come look at my photograph?
IO: Sure.
WIT: It says 2/25, the terrordome.

Questions by the government:

Q Do you know who wrote that out there?
A No, I do not, sir.

Q Now, was it put up subsequent or following your arrival?
A Yes, sir. It was there when I got there originally, but I don't know who wrote it.

Q Do you know the purpose of it?
A No not necessarily, no, sir. I remember markings on a lot of the buildings throughout the Camp Whitehorse facilities that, you know, for whatever reason, these Marines marked things, you know, as a joke or whatever it is. To me it has no meaning. I do not pay attention to that stuff.

Q Showing you picture 8 of 13. What does that represent?
A EPW holding facility, authorized personnel only. That was signs that we posted throughout the compound as to keep any, you know, what it says there, obviously, any unauthorized people to enter our facility without our permission.

Q For the record, the witness just pointed to basically the four corners of the diagram on IO Exhibit 6?
A I believe that this was an area where, you know, the use of force was authorized so we didn't want like somebody entering there without our knowledge and, you know, and be unfriendly or whatnot.

Q What does photograph 9 of 13 represent?
A That represents a view this way of the in processing pens, which I stated earlier needed to be shipped over so you can see the opening between them coincides with this hallway there between the two buildings.

Q For the record, the witness is pointing to a space between the two buildings on IO Exhibit 6. Photograph 10 of 13?
A It's another view of the in processing pens.

Q And photograph 11 of 13, what does that represent?
A It's a far view of the entire EPW compound from, I don't know, a certain distance.

Q ~~Is that the burm that I see?~~
A Yes, it is, sir. It's the protective burm for our people.

IO: Hold on for a second. Go back to that last photo, 11 of 13. Just so I'm orienting myself correctly. Is that a picture of what appears to be the west?

WIT: It's a picture, sir --

IO: West perimeter of the holding pen looking into the opening there where the troop building is?

WIT: Yes, sir.

IO: On the north side.

WIT: It's a picture of someone standing on this side looking this way.

IO: Okay. Thank you.

TC: Let the record reflect the witness has indicated as he's facing the diagram, the position to the right corner of above it diagonally looking into the diagram.

IO: It's a view from what appears to be the northwest area of the outside the compounds facing southeast into the compound.

All right.

WIT: Yes, sir.

TC: May I proceed, sir?

IO: Yes, please.

TC: Thank you.

Questions by the government:

Q I'm not sure what this is. Do you recognize this? This is picture 12 of 13?

A Negative, sir.

TC: Sir, I'm going to withdraw this one.

IO: And the next one is what?

TC: That's correct, sir.

IO: Okay.

TC: Staff Sergeant, you can retake your seat.

IO: IO Exhibit 8 will only contain 11 photos then.

All right.

TC: Thank you, sir.

IO: You can have those, 12 and 13 back. I'm renumbering the exhibit that I've received to reflect there is only 11 photographs instead of 13.

Questions by the government:

Q Staff Sergeant (b)(6) I want to direct your attention now to the 3d of June 2003. All right?

A Yes, sir.

Q Do you recall receiving a prisoner or detainee that day by the name of (b)(6)?

A Yes, sir.

Q All right. What time did he arrive to the facility and what happened? Describe it for me.

A It was early evening hours, I would say around 1900 or so, thereabouts.

Q Now, what happened. Did you get a call from ahead or did the capturing unit radio in to let you know that this was happening. What was going on?

A I don't remember if we got a call on this guy, 'cause like I said earlier, sometimes we would and sometimes we wouldn't, you know, be given heads up before any of the prisoners would arrive or any capturing unit were bringing anybody. I would say that we probably did get a call to prepare for this particular prisoner coming.

Q Did you know he was coming in with anyone else? Do you remember?

A No, sir.

Q Well, what happened? What was the next thing that you remember happening?

A The next thing I remember happening is the capturing unit arriving, which I believe was Weapons Company 2/25 and whatever attachments to them, and bringing in three prisoners.

Q Now, did they pull into inside the compound with the three prisoners?

A Yes, they did. As usual, we only allowed the vehicle that was bringing the prisoners to pull up into the compound area, again, for safety procedures, and the other vehicles to wait outside the compound. So this vehicle proceeded to enter our facility.

Q Did they have an officer or Staff NCO who was bringing in this detainee or prisoner into the camp?

A It was -- I believe Staff Sergeant (b)(6)

Q Did you talk to Staff Sergeant (b)(6) about the situation?

A Yes, I did, sir.

Q What did he tell you?

A He gave me a quick brief of the circumstance of capture and how many prisoners he was turning into us, to our custody, and any other related, you know, information to that effect.

IO: Excuse me. You how do you spell (b)(6)

WIT: It's (b)(6)

IO: Is he a member of 2/25?

WIT: Yes, sir, Weapons Company.

Questions by the government:

Q What did he explain to you were the circumstances of the capture?

A Something to the effect that these individuals were found with an M-16 rifle that was recovered in -- I forget which of their positions. One of the prisoners, obviously, I forget which, and that rifle belonged to the 507 Army Maintenance Battalion that got ambushed in March.

Q How many prisoners were there?

A Three.

Q Male or female?

A Three male prisoners.

Q And after he -- after Staff Sergeant (b)(6) briefed you on the circumstances -- well, did he provide anything else to you besides that they were linked to this weapon?

A No, just that brief information only.

Q Do you recall receiving any phone calls from HET or anything like that about what to do with these three prisoners?

A Negative, sir.

Q And after he finished -- after Staff Sergeant (b)(6) finished with the brief, what did you do next with these three prisoners?

A Well, I was talking to Staff Sergeant (b)(6) the process begins, obviously, and the number one priority is to get these prisoners processed as quickly as possible and get them into the holding buildings. So while this was happening, I'm acquiring the necessary information so I could start logging it into our logbook, the prisoners were being processed at that time, one at a time.

Q Were you present when they were taken from the vehicles they were in, the capturing unit?

A I was present but I was talking to Staff Sergeant (b)(6) so I wasn't really paying attention to how the prisoners were being taken out or.

Q How were they removed from the vehicles? Did you see?

A No, sir.

Q Now, what is the next thing that happened with the in processing of these three individuals?

A The next thing that happened is I told Staff Sergeant (b)(6) "Thank you very much. Have a nice day" and they leave. And then we start the actual process of moving the prisoners from the in processing pens towards the wall and then the search team begins its duty, you know, it's task.

Q Was there a Corpsman present for this?

A Yes, there was.

Q Why?

A For this particular instance, I don't recall why. I think he just happened to be in the area, maybe checking on other prisoners and HM2 (b)(6) I recall was there.

Q Is it not a Corpsman's job to look at their initial health at the beginning of the in processing?

A It is, but due to the demands of, you know, the Corpsman that we had on camp, we only had two Corpsman on camp. If a Corpsman wasn't present because they were utilized somewhere else, then not necessarily they would be there all the time. But they would come and check on the prisoners, you know, periodically. That was one of Major Paulus's big things, you know, to make sure that the Corpsman would look at the prisoners and that they would be healthy.

Q Now, was each individual searched one at a time, or how did that unfold?

A Yes, sir. One at a time, as usual.

Q Did any of the three individuals at that time provide any resistance -- well, do you remember their names?

A No, sir. I mean, we had nicknames for all of the prisoners because it was just easier for us to identify them, since their names are, you know, very complicated to pronounce and whatnot, to remember. So the two prisoners, you know, two of them were taller brothers and they were skinny and tall so we named them (b)(6) as soon as we saw them.

Q All right. Who was searched first, the (b)(6) brothers or (b)(6)?

A The (b)(6) I think. Yes.

Q And who performed the search. Do you remember?

A Yes, sir. It was Sergeant Pittman, Lance Corporal (b)(6) and Sergeant (b)(6).

Q Did anything unusual happen during the search of either one of -- their names are actually the (b)(6) brothers, and I'm going to refer to them as that. Right? Do you understand that?

A Yes, sir.

Q Did anything unusual happen during the search of the (b)(6) (b)(6)?

A Unusual? No, sir.

Q And did they resist in any way?

A The brothers, no, sir.

Q Talk about the search of (b)(6).

A Yes, sir.

Q Who conducted the search?

A Lance Corporal (b)(6) and Sergeant (b)(6).

Q And where were you while the search was conducted?

A I was sitting down -- may I show you?

Q Sure, please.

A I was sitting down in this area here, this corner right here.

Q For the record, the witness is pointing to -- thank you. Just above the left in processing pen and hallway between the two holding buildings spaced between?

A And a small folding chair. Like a chair that falls open. And right in that corner where I pointed out there, there was a hand wash station that we had there for, you know, your hygienic purposes, you know, when you handle prisoners and whatnot. So we could keep us, you know, keep us as sanitary as possible. And I was sitting right behind -- or adjacent to that water station, so my view of the prisoners being searched was blocked by this station.

Q So you had an obstructed view then of the search of (b)(6)

A Yes, I had an obstructed view. Now, I could see if somebody was standing in front of (b)(6) in a partial way, but it's not like I have a view like I have of you right now, sir.

Q All right. Did anything happen? Did you observe anything?

IO: Excuse me. May I ask a question first. Where was the search of (b)(6) being conducted?

WIT: In the other side -- against the wall right here, sir, where we usually did them, which was the other side of the -- this hand wash station was right in this corner.

IO: All right. So it was on the east side of that holding pen?

WIT: Yes, sir. Against the wall adjacent to the hand wash station.

IO: All right.

TC: Did you say east side, sir?

IO: Isn't that the east side?

TC: It's southeast side, sir, southeast corner, looks like.

IO: Oh, of the building. The right side of the diagram is north. The left side of the diagram would be east, right? Isn't it that way in Texas, too?

TC: I thought you said pen.

CC (Mr. Higgins): Are you referring to the building?

DC (Mr. Zimmerman): Let's say the building were on the -- okay.
Right.

IO: Right. Staff Sergeant, correct me if I'm wrong.

If I understood your testimony, the search of (b)(6) was conducted in the area between the processing pens and the holding building up against the wall of the holding building.

Is that right?

WIT: Yes, sir.

IO: Is that right?

WIT: Right here.

TC: I do have the photograph, sir.

IO: Why don't you just point to it on the diagram.

WIT: Right here.

IO: Okay. So up against the wall. That would be the east wall of holding building.

WIT: The east wall of the whole south wall of this particular building.

IO: Okay. Is everybody clear on that? If I said pen, I misspoke.

WIT: This is the same spot where we did all of the other searches.

Questions by the government:

Q Staff Sergeant (b)(6) did anything that you hear or observe anything unusual happening during the search of (b)(6)

A Unusual? What do you mean by that, sir?

Q Did he resist in any way. Do you know?
A The only thing that I observed unusual about (b)(6) it was that he was very old. I later learned that he was 52 years old. And a 52 year-old man in Iraq definitely, you know, he looks like he is in his 70s. I guess it's just different durations of lifestyles over there. And he was lethargic and slow in his movements. He was not alert like most of the prisoners were. I could say that personally, as far as I'm concerned, he --

Q Wait a second. Let me ask you: Prior to him getting searched, can you describe what he was wearing? Was he handcuffed?
A When he was being searched?

Q That's right.
A When he was being searched he wasn't wearing anything, sir.

Q Prior to him being searched, when he's pulled off the car, was he flexicuffed?
A Flexicuffed.

Q Did he have a sand bag over his head?
A Yes, sir.

Q And what was he wearing?
A A robe.

Q He had on a robe?
A Yes, sir.

Q Now, you indicated he looked old. Is that right?
A Yes, sir.

Q How tall was he about. Do you remember, roughly? I know its --
A 69 inches 69.

Q About 5-foot 8, 5-foot 9?
A Yes, sir.

Q How much did he weigh?
A He looked pretty healthy.

Q How much did he weigh though? Was he fat?
A Yes, sir. Unusually fat by comparison to other prisoners. Well fed, I should say.

Q And when he was brought in for this strip search, was the bag removed from his head?
A When he was put against the wall and the bag removed, the usual process and the handcuffs cut, that is when I noticed, you know, his age or the way he looked. Not before, obviously.

Q Now, did you have a translator with him. When the search was being conducted, did Lance Corporal (b)(6) have a translator? Do you know?
A Sergeant (b)(6)

Q All right. Sergeant?
A -- was he present.

Q Was he present?
A Yes. He was the translator.

Q Was he speaking to (b)(6)?

IO: Slow down for one second. Excuse me. (b)(6) or (b)(6) If you could spell it.

WIT: If I could spell it, sir. Don't quote me on the correct spelling. It's (b)(6).

IO: Is he a member of 2/25?
WIT: No, sir. He was attached to 2/25.
IO: And he was acting as a translator?
WIT: Yes, sir.
IO: Thank you.

Questions by the government:

Q How long did the search last of (b)(6)?
A The usual average, sir. I would say, I don't know, five minutes five, six minutes. Just the usual, however long it takes to remove the clothing, check the clothing, make sure there's no weapons.

Q Did you notice anything unusual during that time frame? Did Lance Corporal (b)(6) have to use force on (b)(6) during that search.

A If that is unusual, sir. Besides the physical condition of this particular individual, as far as what I observed, being slow and not responsive to the commands, even in his own language, there was an instance where he went out and tried to reach and grab Lance Corporal (b)(6) hand.

Q Now, you just testified that he had an obstructed view. Did you see that happen or did you hear it? How do you know that that occurred?

A I could not see (b)(6) because of the obstruction of the hand wash station, but I could see whoever was in front of him. At that particular time when I looked up, I remember this whole time I'm writing down, you know, diligently in the logbook doing a detail inventory of the items that these individuals are bringing and, you know, writing all the information from the tags and making up the tags. I don't remember seeing him grab Lance Corporal (b)(6) -- try to grab Lance Corporal (b)(6). Actually, he grabbed his hand like this, and then I observed Sergeant (b)(6) you know, telling him not to do that and slapping his hand down.

Q So Sergeant (b)(6) slapped (b)(6) hand down. Did you see any more physical activity between the Marines that were conducting the search and (b)(6)?

A Besides the HM2 (b)(6) being there and, like, conducting his examination, no, I didn't see anything else besides that.

Q And (b)(6) was being -- he wasn't listening to the commands?

A Was he listening.

Q He wasn't obeying the commands of the Marines that were searching him?

A Not really, sir. Like I said, he was lethargic in his movements, and not responsive, and sort of sickly looking.

IO: I'm sorry. Say that last part again.

WIT: He looked like he was ill, perhaps. Not something that was obvious as far as like bleeding or anything like that but, you know, not all there.

IO: Okay.

Questions by the government:

WIT: But this is how we --

Q Hold on. Okay. Now, HM2 (b)(6) was ordered to perform a medical inspection on him during that time. Right?

A Yes, sir.

Q And he did that?

A Yes, he did.

Q And what was his finding? Do you recall?

A Finding was that the prisoner appeared to be healthy.

Q In fact, did you log that into the book?

A I think I did. And I might have logged in, you know, a few bruises here and there. Maybe lacerations from, like, being transported or whatnot. I don't recall exactly what I logged in the book, to be honest with you.

TC: I'm going to show this exhibit. I'd like to have it marked -- actually, sir, the next in order?

IO: That would be 35. And what is it?

TC: It's a logbook entry from the camp on June 3d. May I show it to the defense, sir?

IO: Sure, absolutely.

TC: Sir, may we take a brief recess, about five minutes?

IO: Do you need one?

TC: Just for comfort's sake, sir. We've been going about two hours.

IO: All right.

We'll stand in recess until 1400 using this clock as the clock for going by. That gives you about five minutes.

The Article 32 Investigation recessed at 1355, 26 January 2004.

The Article 32 Investigation was called to order at 1400, 26 January 2004.

IO: The proceedings will be called to order. All parties present when the court recessed are once again present. Accused and counsel are present.

Captain McCall, do you want to continue?

IO Exhibit 35 is where we left off.

TC: May I approach, sir?

IO: Yes.

TC: Handing what's the number again, sir. I'm sorry.

IO: Thirty-five.

TC: ~~Handing the witness IO 35. Staff Sergeant (b)(6)~~
take a look at that and look up at me when you are done.

The witness did as directed.

TC: Sir, I have a copy for you, if you would like.

IO: Sure. Thank you.

Questions by the government:

Q Do you recognize that document?

A Yes, sir.

Q What is it?

A It's a photo copy of a portion of the logbook that we kept for administrative purposes on the prisoners, sir.

Q Is there an entry for (b)(6) on that?
A Yes, there is, sir.

Q Okay. Before you get to that entry, can you just explain how the -- very brief -- how the columns are delineated, what each column represents?

A Each column represents certain vital information that we needed on each prisoner: Date, time in custody, when he was received, the time that we took custody of the prisoner, obviously, and the date, the name of the prisoner as best as to our knowledge. Then tag number, basically information that was transferred or conveyed to us from the capturing units. And also apparent physical condition of the EPW, circumstance of capture, and a brief description of any belongings that they would have or any type of property that we deemed it was important to note.

Q Was there an entry for (b)(6) on this?
A Yes, there is, sir.

Q And it's the bottom one on the first page of the exhibit. Correct?
A That's correct, sir.

Q The last line?
A Yes, sir.

Q And did you write that?
A Yes, sir, that is my handwriting.

Q Did you write that during the search? Just after it?
A During the search this is what is written on the book, and except for column that is marked date time released. That is information that is written on this book. Obviously, one of the prisoners being released or transferred or whatnot or to another facility.

[END OF PAGE]

Q Now, I want to direct your attention then to the column that says the condition of the EPW/detainee for (b)(6) What did you write there?

A I can't tell, sir, because I don't know what line relates to what from the second page.

This might not have been photo copied accurately as far as like line by line, so I don't know where the page ends per se or what it relates to. This was done on a side by side entry, so I can't tell what line belongs to the first page because there is no numbers marking it that that line specifically relates to the other line on the other page.

IO: Well, Staff Sergeant, can you -- take those apart, those two pages apart. Turn them side by side and start at the very top. Looks like there is one entry per line. I mean, one EPW per line, and countdown and see if they correspond somehow. If they don't, then you may be right. You can't tell.

And while he's doing that, Captain McCall, are you offering this exhibit?

TC: Yes, sir.

IO: Any objection?

CC (Mr. Zimmermann): I don't know yet.

IO: Let me know when you know.

CC (Mr. Zimmermann): But not to page 1. He's already told us that this ain't right. So we have no objection.

Questions by the government:

THE WITNESS: They seem to coincide, sir, but like I said --

Q Well, look at the 28th line down on the second Page.
A Okay.

Q Is it your testament that it's not your handwriting?
A It's my handwriting.

Q All right. Now --
A The last line on both pages is my handwriting.

Q How about the two lines above it. Is that your handwriting as well?

A Yes, sir.

Q And you would agree that they are both on the 28th line, if they were to correspond with each other when they are sitting next to each other?

A Yes, sir. But not necessarily. I don't remember the information on the second page being exactly related to each individual on that first page, sir. Because the second page doesn't have a name reference in the first page. We processed over 200 people, sir, so.

IO: Where is the original of this document?

TC: I believe NCIS has it, sir.

IO: Okay. Here at Camp Pendleton?

TC: I'd have to check with the supervising agent.

IO: I think Staff Sergeant (b)(6) point is well taken that he can identify the entries on the first page, but he can't swear that the entries on the second page correspond exactly with those on the first page since they are not sitting side by side. I mean, he has identified his writing, but it maybe hua of you to get the original and then --

Staff Sergeant (b)(6) are you here locally. Are you assigned to Camp Pendleton, or?

WIT: No, sir.

IO: You are on active duty now, where?

WIT: I currently -- my duty station is Garden City, New York, but I reside in (b)(6)

IO: Okay. Well --

TC: I'll just have to -- we'll just have to find the original and recall him, sir.

IO: Okay. All right. Why don't you move on then. IO Exhibit 35 in its present form is not being admitted nor considered by me until there is some proper authentication.

Questions by the government:

Q Now, Mr. (b)(6), he is in process, the search is done, HM2 (b)(6) conducts his initial medical inspection of him. you fill in your logbook. What happens next to (b)(6)

A After he's been processed and medically checked and all that, he's placed into a holding cell in one of the holding buildings.

Q And what about the other two (b)(6) brothers, where are they placed?

A They are placed in the same building, but due to the space limitations, we segregate them within the same building where they -- with Constantino wire in between them.

Q All right. Using IO Exhibit 6, point to the holding building where (b)(6) was placed.

A Right in here, sir, with the brothers in this building.

Q So all three of them are placed in the holding building to the right middle of the diagram?

A Yes, sir. And all the other prisoners are transferred to this side as to keep them separated.

IO: I'm sorry. Transferred to what side?

WIT: To this side, sir.

IO: To the other holding building?

WIT: Yes, sir.

IO: So you only have (b)(6) and the other two brothers in the holding building, the northernmost holding building?

WIT: Yes, sir.

IO: All by themselves.

WIT: Yes, sir.

IO: And the other ones would be transferred to the southernmost holding building?

WIT: Yes, sir.

IO: Now, with respect to (b)(6) and the (b)(6) are they segregated within the holding building that they were in?

WIT: Yes, sir.

IO: And how would you do that?

WIT: We would place like tiers of Constantino wire, like, at certain spots in the building just to, like, create different sections.

IO: They could see each other, obviously, through the Constantino wire.

WIT: Yes, sir. They could see each other, but they can't approach each other and be within like, you know, talking distance.

IO: But if they raised their voice, they could talk and be heard. Right?

WIT: Yes, sir. But not whispered like, you know, like right next to each other. So that was the purpose of that.

IO: Thank you.

WIT: Yes, sir.

Questions by the government:

Q When these three detainees were put in that holding building and segregated, were they cuffed at that time?
A Yes, sir.

Q Were they cuffed behind their back or in front. Do you remember?
A Behind.

Q Behind?
A Should be behind.

Q And did they have sandbags over their face?
A Yes, sir.

Q Now, was this the start of the isolation phase for these three prisoners?
A Yes, sir.

Q Who was the first guard shift on duty that night. Do you remember?

A No, sir.

Q Did you give the order to start doing -- or start with the isolation phase at that point?

A There was no order given. It's automatic, sir. That's part of the process that we had in place.

Q Automatic. And they started to stand up for a period of time and sit down?

A Yes, sir.

Q All three of them?

A Yes, sir. It wasn't my shift, per se, right after that. I was not on until the next morning, but this was the process.

Q Okay. Did you --

A So I didn't observe all night, this thing going on.

Q Right. Did you leave at some point?

A Yes, sir.

Q How long after the search had been completed and prisoners put their clothes back on, and handcuffed them back, and put in that holding building, was it before you left?

A Almost immediately. Once the prisoners -- my job was pretty much done as far as, like, if I was in a particular shift at that time, if I was in a guard on a shift at that moment -- my job was pretty much done as soon as I wrote down the administrative aspects of it, log it in, and make sure the prisoners, you know, went into the holding facility safely, there were no incident, you know, no attempts of escaping or anything like that. And then for whatever shift was on at that time, whatever guards were at that time, they just continued to do their job.

Q And what time of day was it when you left? When it was all complete?

A If the time I arrived there, I don't know, around 1900. Maybe this whole thing took like 30 minutes.

Q And where did you go?

A I turned to whatever I was doing. I mean, either the billeting area or somewhere else within the compound.

Q Were you on guard duty at all that following night?
A No, sir.

Q When was the next time that you saw (b)(6)?
A The next time I saw (b)(6) was the next morning while they were eating chow at around, I don't know, early in the morning. We would take them out before the sun would get hot, 0630, 0700.

Q What was his -- how close did you get to him?
A Maybe like the distance between and you me, sir.

Q Just looking into his holding tent?
A Right. I walked by, you know, every morning, obviously, when I would get up, go to the head which was towards that area.

Q And at that time, they were still performing the sitting up and standing down. Right?
A No. At that time I observed (b)(6) sitting down, eating chow.

IO: What would you estimate the distance between the witness and yourself to be?

TC: I'm sorry. I would say, for the record, 20 feet, 15 feet.

IO: Any objection to that, 15 feet? Is that about right?

WIT: I observed Lance Corporal (b)(6) guarding -- I believe it was Lance Corporal (b)(6) shift if Lance Corporal (b)(6) was there, obviously. He was right here if I may Standing right here watching (b)(6) was in this pen by himself eating chow, or what appeared to be eating chow, and then he had the chow next to him in the water.

Questions by the government:

Q And for the record, the witness has pointed to the northern holding building on the southeastern wall and then went into the northernmost in processing pen?
A They continued walking back here where we had our head facilities and, you know, go back, walk by, talk to the guards. If everything's okay, "Yeah, good to go," and just go back to turn to whatever else I was doing.

Q And going to the next time that you saw (b)(6)
A When the HET team came over later on that morning and
(b)(6) was escorted to be interrogated.

Q Did he need assistance to get from the in processing pen
to the building where the HET team would be interviewing
him. Do you recall?
A Yes. I recall he was -- as I said earlier,
non-responsive, and he needed some assistance in being
walked over to this area here where they conducted
interrogation. But he walked on his own 2 feet. Like,
nobody had to carry him or push him or anything. Just
kind of like help him get up and escort him.

Q And for the record, the witness has indicated the two
buildings, the two rectangles in the southeastern corner
of IO 6. Now, when was the next time you saw him?
A The next time I saw him, sir, was when (b)(6) was in
the most northern holding facility, most northern
building where we kept the prisoners -- I'm sorry. I
stand corrected. Most southern -- this building right
here.

Q Southern holding building on the diagram?
A Right. And he was being taken out of his cell.

Q Okay. What day was that was that? Was that the same
day, June 4th or was it the next day, June 5th. Do you
remember?
A Probably the next day.

Q Well, would anything help refresh your memory?
A Yes, sir.

TC: Hold on a second, Staff Sergeant (b)(6)
Sir, may I approach and take that exhibit away from the
witness?

IO: Sure.

Questions by the government:

THE WITNESS: Before we received him on the third, according to
the log there that I wrote, then it would be the next
day, sir.

Q Okay.

A The next day in the afternoon. Late afternoon when I saw him next.

Q Do you remember writing a statement right after this, right after the -- do you remember preparing a statement, the order of Major Paulus, after the death of

(b)(6) ?

A Yes, sir.

Q And you hand wrote that statement?

A Yes, sir.

Q Do you remember writing "the next time I had interaction with EPW tag number (b)(6) was on June 5th at about 1700 when this EPW was found in his cell laying down and defecated all over himself.

CC (Mr. Zimmermann): Excuse me. I know we don't have the rules of evidence, but, still, that is not a proper way to refresh memory. If that's what he is doing. You don't read something to the --

IO: I'm not sure if he's refreshing memory or impeaching the witness. But you're right. The rules of evidence don't apply, so I'll give him some leeway.

Questions by the government:

Q If you had your statement, would that help refresh your recollection?

A If that is what it says on the statement, sir, then those were the dates. I mean, I don't know if a 24-hour or 36 period went by, but I remember the prisoner was not in our custody very long before he passed away.

Q I understand that. But I want you to be sure.

A Yes, sir.

Q So if you had your statement, would that best help refresh your recollection as to what the dates were, if you looked at your statement?

A Yes, sir, absolutely.

TC: Sir, may I approach?

IO: Yes.

TC: Take your time and look through it.

The accused perused the document.

Questions by the government:

Q Does that help refresh your recollection?

A Yes, sir.

TC: Sir, may I approach?

IO: Yes.

Questions by the government:

Q After the morning when (b)(6) was taken by the HET folks for the interview, when was the next time that you saw him. Do you remember?

A The next time I saw him was when he had defecated inside the cell.

Q Is that the same day on June 4th?

A No, it was the next day then.

Q What day was it?

A On the 5th.

Q On the 5th of June. At what time?

A Around 1700.

Q What happened?

A What happened at that time exactly?

Q Yes.

A That day I was very involved in the proceedings of receiving a very high profile prisoner, a (b)(6) -- I forget the name of him -- that required a special accommodations. My attention had been turned to that and I was in the process of making all the arrangements necessary and making sure that this prisoner would get what was required of us. Around that time when the prisoner -- this high profile prisoner was already in our custody and placed in isolation at this facility right here.

Q The witness has indicated that a few rectangles on the bottom left corner of the diagram on IO 6?

A That's where the (b)(6) was being placed in custody, away from all the other prisoners. I was briefing the guard shift that was specially assigned to guard this individual.

Q What happened right around 1700?

A At around that time, while I was talking to the guards here, I heard some commotion and yelling back -- coming from the holding facility. So I proceeded to walk over there. And I entered the facility through here into the hallways between the two buildings.

Q And for the record, the witness has taken his finger and drawn through the space between the two in processing pens and then the space between the two holding buildings. Yes?

A And proceeded to walk into the most southern holding facility, holding building, where I witnessed -- Mr. (b)(6) was there naked. Lance Corporal (b)(6) was there, Major Paulus was there, and Major (b)(6) was there.

Q And then when you arrived in the southernmost holding building, what happened next?

A I walked in and then I see Lance Corporal (b)(6) taking (b)(6) outside of the facility.

Q How was he taking him?

A He was dragging (b)(6) out of the facility from the head area because he had defecated all over himself and there was no other way to pretty much grab him from anywhere else.

Q Do you know who had told Lance Corporal (b)(6) to do that?

A No, negative.

Q And when you say he was taking him, was he dragging -- can you describe how he was getting him from the holding building or how he was moving (b)(6)?

A He had his arms and he was squatting down -- I mean Lance Corporal (b)(6) -- squatting down and assisting (b)(6) from the head area and dragging him back to proceed to take him out of the facility of the holding building.

Q And for the record, the witness has taken his right hand, put it out about 10 inches, at approximately belly level, his left hand, just below it, just below his right hand, and indicating a pulling motion towards his chest.

A That is correct. But at that same time, Lance Corporal (b)(6) had (b)(6) head propped up against his legs for like support as he's dragging him back.

TC: Sir, I'd also add for the record that the witness is leaning over substantially while demonstrating the technique. Not standing upright as the trial counsel has indicated.

WIT: It's more in a squatting position, yes.

IO: (b)(6) was in the --

WIT: Squatting position, yes, sir.

IO: -- squatting.

Questions by the government:

Q Now, after you saw Lance Corporal (b)(6) with (b)(6) in this position, what did do you next?

A I observed this that I just described for about 10 feet or about six, seven seconds. I walked in as he was doing this already, like I said, 10 feet away from the door as he exited. What I do next, I turn to the officers and, you know, the basic question: What happened? What is's going on, or whatever, and they proceeded to explain to me that (b)(6) had decided to -- or had defecated all over himself. And I know the Lance Corporal had, you know, stripped down his clothes because they were all full of that, and he had thrown himself on to the Constantino wire like, on his own.

Q Do you mean (b)(6)

A (b)(6) had thrown himself in the Constantino wire. And then the only way to, obviously, clean him up and clean out the whole cell was to take him out of there, so.

Q Did you watch from the point of -- the point where Lance Corporal (b)(6) grabbed (b)(6) and dragged him to where he stopped with (b)(6), starting point and the finishing point?

A No, sir. When I walked in there, Lance Corporal (b)(6) was already in the process of doing this. I didn't see the starting of it. I just saw what was in progress already. And then I observed as they both exited and then I followed them to see where it would end, or the ending point would be of this carry.

Q Did you see where (b)(6) -- at point -- what building in the facility he finally ended at this time frame around 1700 on the 5th of June? Where did he ultimately go?

A Ultimately he went -- just because when I walked out of that facility and I looked over, he was placed in here in the holding pen.

Q For the record, the witness has indicated a holding pen on the diagram? Now, did you leave then or what did you do?

A After that conversation --

Q When he was placed in the holding pen, you had this conversation. What did you do next?

A I exited and went over to continue with his duties. He had his present duties for me, and coordinating the security and custody of this new prisoner.

~~Q For the record, the witness has indicated the two rectangles at the bottom of the corner diagram. Did you have anymore contact with (b)(6) on the 5th of June?~~

A The next time that I had contact with Mr. (b)(6) was the next morning of June 6th at around 0745, where I was awakened by Corporal (b)(6) who was the NCOIC of the shift at that particular time, and he awakened me saying that (b)(6) was unresponsive.

Q And what did do you?

A I immediately, obviously, got up and went down to look. And Lance Corporal (b)(6) - Lance Corporal's (b)(6) rack was adjacent to mine and he heard also what Corporal (b)(6) was saying and, you know, asked me to accompany me and I said, sure, he could come. We went down and proceeded to check (b)(6) for vital signs. Since he looked unresponsive at first, and he looked like he had no vital signs.

Q Where was Mr (b)(6) when you when this occurred?
A Same place that I seen him earlier, in the holding pen.

Q For the record, the witness pointed to the holding pen on IO 6. And I'm sorry, what time was this when this occurred?
A Around 0045.

Q Did you go get HM2 (b)(6) or any other Corpsman?
A I immediately, when we did our initial vital sign checks, and we realized that he wasn't responsive or that we couldn't detect the signs, I dispatched Lance Corporal (b)(6) immediately to the BAS and to get HM2 (b)(6) a Corpsman. And then I proceeded myself to go and personally inform Major Paulus of our findings.

Q And what were your findings? What did you tell Major Paulus?
A I told Major Paulus that (b)(6) apparently seems to be unresponsive, possibly dead, you know, just to come over and check out the situation.

Q What was his reaction?
A His reaction was, "Okay, I'll be right over."

Q Staff Sergeant (b)(6) I want to direct your attention now to the next day or two after this incident occurred, where you found (b)(6) lying in a holding pen and he was non-responsive. Okay?
A Yes, sir.

Q Were you ordered at any point to produce statements about the incident, about (b)(6)?
A Yes, sir. I believe the next day.

Q What happened?
A I was ordered by Major Paulus to, you know, write statements, myself and the other guards, in reference to the incident.

Q And did you instruct the other guards to do this, or did Major Paulus?
A No, I did.

Q How did you do it? Did you round them all up. Was it a formation?
A Yes, sir. I rounded them all up.

Q In a formation or where?
A I rounded them all up, except for the Marines that were on a shift at that time, obviously. I told them individually, but the rest of them that were free at that time, I rounded them up and told them that we have to write statements right away.

Q And did you say what the reason was for?
A The reason was for the incident, the death -- or the findings of the death of (b)(6)

Q Had you told them that you suspected them of doing something to (b)(6)
A Negative, sir.

Q Did you tell any of the guards that they were suspected of violating any of the articles of the UCMJ?
A Negative, sir.

Q What were your exact words to the guards?
A My exact words were, we need to write statements on anything you saw or anything you witnessed during the period that (b)(6) was in our custody.

Q Did you read anyone their Article 31(b) rights at this time?
A Negative, sir.

Q Did anyone complain to you, any of the guards come up and complain that they didn't want to do this?
A Negative, sir.

Q Who ultimately collected the statements? Do you remember?
A I did, sir.

Q Did you ever collect a statement from Lance Corporal (b)(6) and Sergeant Pittman?
A Yes, sir.

TC: Sir, I'd like to approach the witness and hand him what has been marked IO 13 and 18, which are up at your table, actually.

IO: I'm sorry?

TC: I would like to hand the witness IO Exhibit 13 and 18.

ENCLOSURE XCV
65-136

IO: All right.

TC: Sir, I think --

IO: Oh, I've got 'em. I was wondering why you were staring at me. I thought you might have had extra copies to show him.

All right. 13 and 18, is that what you said?

TC: Yes, sir.

Questions by the government:

Q Take a look at those two exhibits and then look back up at me when you are done?

A Sir, do you want me to read the whole contents of it?

Q No. Do you recognize them?

A I recognize them as far as being statements, yes, I do, sir.

Q Are those the statements that you collected up following your meeting with the guards after the death of

(b)(6)
A Based on these dates that are here, apparently so, sir, but like I said, I don't have a photographic memory. I wouldn't remember everybody's statements, but it seems like --

~~Q And who are those statements for? Who wrote those statements?~~

CC (Mr. Zimmermann): I'm going to object to hearing testimony from documents not in evidence, particularly since we're challenging the admissibility.

IO: I understand. I think he's trying to lay a foundation if he can. Let's deal with IO 13 and 18 so the record is clear. Ask him to look at 13 first.

Questions by the government:

Q Can you look at 13 please, first. Who wrote that statement?

A I cannot attest to anybody's handwriting, sir.

Q Who's signature is on that statement?
A It seems like it's Lance Corporal (b)(6) signature.

Q Does that look like the statements you collected on the 6th of June 2003?
A Yes, sir. I don't remember exactly every single statement that I collected. But based on the information that I'm scanning through here, sir, quickly, it seems like it's related to that.

TC: Sir, at this time I would offer the statement IO Exhibit 13.

IO: Mr. Zimmermann?

CC (Mr. Zimmermann): You are offering this now?

TC: Yes.

CC (Mr. Zimmermann): We object on the basis of a violation of Article 31(b) and M.R.E. 305. And we kind of briefed together because we thought the statements were going to be offered at the same time. The NCIS one, I can give you the brief now. It lays out what the case law is and what our position is.

IO: Other than the objection regarding the false self-incrimination under Article 31 rights, is there any objection on the basis of the authentication that is being provided right now?

CC (Mr. Zimmermann): I don't think he's identified it, quite frankly. I mean, he doesn't remember what that is. I don't know how he could. So I don't think that they've proven enough that that is the statement that Lance Corporal (b)(6) gave.

IO: So I'm inclined to agree with the defense, on at least that point. I haven't read the defense brief on the Article 31 issue, which is one of the rules of evidence that we will abide by here. I'm giving you an opportunity to make your case here.

TC: Yes, sir. My only response would be we're at an Article 32 hearing. The rules of evidence don't apply.

IO: Well, some of them do. And this maybe an area where the rules of evidence do apply.

CC (Mr. Zimmermann): I'm not sure, sir. First of all, I mean, let's deal with the easy one first. This witness is not qualified to identify Lance Corporal (b)(6) statement. I mean, unless he initialed it or there is something that he recognizes or it's in a logbook that he did, I mean, you can call Staff Sergeant Schmukatelly and hand him a piece of paper and say, "If you read the content and look at who signed it, is that Lance Corporal (b)(6) signature?"

IO: Well, I don't know if I'd quite go that far. I don't know if I agree with you entirely in that statement. We're dealing with an Article 32 here, and with respect to authentication, maybe Staff Sergeant (b)(6) has said enough that would somewhat authenticate this statement. I mean, he was there, he asked for the statements, he gathered statements. This isn't just Staff Sergeant Schmukatelly coming in out of the clear blue and looking at it and saying, "Well, it appears to be a statement that may have been provided." So he does have some personal knowledge about the events that occurred at that point and time. So that's the one issue.

CC (Mr. Zimmermann): I have a suggestion, a more efficient way to do this. The agent that used this statement is supposed to testify today, now probably will be on tomorrow. Frankly, given the time of day, he's probably the next witness. So why don't we do it at the same time, and then we can present our brief and you can look at it one time, 'cause they are blended together.

IO: Okay. As I said, I don't know what lies in store for me here. I don't know what witnesses are going to be called and what they are necessarily going to testify to.

CC (Mr. Zimmermann): Counsel advised me that the agent in this case had some travel problem.

IO: Right, he's not going to be here today.

CC (Mr. Zimmermann): Right, but he's a witness that -- I assume you are talking about James. He is the witness that's going to come in and that is who I think counsel is referring to. He should be able to identify it because he used it to get the NCIS statement that we are challenging as well. So why don't we just take them up together instead of asking him to make a piece meal ruling today. It's just a suggestion.

IO: Well, I'm not going to tell the government how to present their case. Right now we have the issue of the Article 31 rights. Let's put aside the issue of authentication. We have the issue of the Article 31 rights. So Mr. Zimmerman's suggestion seems to be well taken. It gives you the evening. Have they received your brief?

CC (Mr. Zimmermann): Sir, we didn't. I mean, we didn't know until just a few minutes ago that they really were going to introduce this.

IO: Well, what did you think they were going to do?

CC (Mr. Zimmermann): We have a copy for them, that way we can hand them a copy when we hand you a copy.

IO: Well, it gives you the opportunity this evening, Captain McCall, to review their brief. I'll have an opportunity to review it, or I can wait. If you want to submit something, I'll read them together at the same time. I mean, that -- putting aside the authentication issue is

TC: Is this an authentication issue or Article 31?

IO: Article 31. I'm less concerned about the authentication issue. I think that you are going to be able solve that one. But I don't know if you are going to be able to solve or not the Article 31 rights issue.

TC: Then I'll withdraw the offering of both exhibits at this point, sir.

IO: All right.

TC: Sir, may I retrieve the exhibits?

IO: Sure.

TC: I have no more questions, sir.

IO: All right.

What time is that? Quarter to three, 2:45. Should we press forward? Who's going to cross-examine Staff Sergeant (b)(6)

DC (Captain Studenka): I will, sir.

CROSS-EXAMINATION

Questions by defense counsel (Captain Studenka):

Q Good afternoon, Staff Sergeant?

A Good afternoon, sir.

Q Before we start, I want to focus on 5 June?

A Yes, sir.

Q I think we already covered or established that's the day of the first defecation. That was a hectic day for yourself and for the Whitehorse Marines. Correct?

A Yes, sir.

Q And that was because you had inbound a high profile detainee?

A Yes, sir.

Q The (b)(6) that you've already referred to was coming to your facility?

A That is correct, sir.

Q And this (b)(6) was a high power person from outside from the An Nasriyah area?

A Yes, sir. He was a political and, I guess, ethnic figure in the vicinity.

Q And because of that position, you inherited, as the staff NCOIC of the facility, you inherited certain logistical problems. Correct?

A Yes, sir.

Q You had to give him special billeting?

A Yes, sir.

Q Separate and apart from the rest of the detainees?
A That is correct, sir.

Q You had to give him a special head facility?
A Yes, sir.

Q You had to give him his own guard?
A Yes, sir.

Q Or guards because now he was in a different location than you had ever used before for detainees. Correct?
A Correct, sir.

Q That was your focus as a Staff NCOIC that day, preparing for that?
A Yes, sir.

Q Now, you had also heard from higher that upon capture of this (b)(6), there was some civil disobedience from where they took him or extracted him. Correct?
A Yes, correct. It was not an easy extraction.

Q They had to get physical with some of the personnel out in town, essentially?
A Yes, sir.

Q And some of that personnel, at least as higher was telling you, was coming to the Whitehorse facility. Correct?
A That was a imminent threat, yes, sir.

Q It was an imminent threat that essentially a hostile mob was on it's way, potentially, that afternoon on the 5th. Correct?
A Yes, sir.

Q So much so that at some point that afternoon, Camp Whitehorse went to stand to?
A Yes, sir.

Q You had -- well essentially stand to modified, I suppose, because you still had the detention concerns for the other EPWs inside. Right?
A That is correct, sir.

Q But Marines --

IO: Now, you're going to have to explain to me what stand to means.

DC (Captain Studenka): Sir, stand to being -- basically everybody was on a weapon.

Correct?

WIT: Yes, sir. Turn to.

Questions by defense counsel (Captain Studenka):

Q Okay. Turn to. Everybody dawned flak and Kevlar when they normally wouldn't have that on a normal basis?

A Yes, sir, or went to combat mode.

Q Went into a combat mode. And that was on the same afternoon as the 5th?

A Yes, sir.

Q Now, at some point while you were preparing for the arrival of the (b)(6) and perhaps the arrival of this mob, this angry horde, you came into some information or you heard a commotion or yelling as you already described on direct, from the holding building.

Correct?

A Correct, sir.

Q Were you able to distinguish the voices of what that yelling was?

A Not really, sir.

Q Who it was from?

A No, sir just a direction.

Q Just a general direction?

A Yes, sir.

Q And you wouldn't describe that as screaming from pain, would you?

A No, not really, sir.

Q Okay. You didn't hear any sounds of kicking or punching or slapping?

A No, sir, just like loud voices.

Q Loud voices?

A Maybe yelling.

Q Okay. Yelling. Was this yelling consistent with day to day operations within Camp Whitehorse, as far as correcting detainees?

A Yes, sir.

Q Basic law enforcement type commands that you heard?

A Yes, sir.

Q But it got your attention. Correct?

A Yes, sir.

Q And that is what led you to go over physically to the holding building. I believe you identified the central holding building on that chart. Correct?

A That is correct, sir.

Q Now, you walked into that holding building or the holding pen and you said inside was Major Paulus?

A Yes, sir.

Q Inside was Major (b)(6) ?

A Correct, sir.

Q Inside was Lance Corporal (b)(6) ?

A Yes, sir.

Q Inside was Mr. (b)(6) ?

A Yes, sir.

Q Was Sergeant (b)(6) present inside the holding building at that time?

A I think he may have came later on, sir. I'm not sure.

Q Okay. What do you recall? Was he in there when you came into the holding building?

A No, sir.

Q Okay. Was Lance Corporal (b)(6) in the holding building at the time that you came in?

A Negative, sir.

Q You said on direct that you witnessed my client, Lance Corporal (b)(6) in contact with (b)(6) from a distance of, I believe you said 10 feet?

A Yes, sir.

Q And at that time, he was -- you kind of demonstrated there on the witness stand, he was holding his chin with one hand. Is that correct?

A Yes, sir. He was holding his chin and his head area with actually both hands.

Q Okay?

A At different parts of his.

Q So one hand was kind of cupped. I think you demonstrated underneath the chin of (b)(6)

A Right, sir, as a sort of, like, so they could get a grip on the person.

Q Okay. And the on the other hand was also in the head region supporting it?

A Yes, sir.

Q And I believe you demonstrated that Lance Corporal (b)(6) was squatting down or bending forward in an attempt to move (b)(6)

A An attempt to assist (b)(6) on the pull or drag, whatever you want to call it.

Q Okay. Did it appear to you that Lance Corporal (b)(6) was using every means possible to cautiously move (b)(6)

A Yes, sir. Under the circumstances, which are very strange and unique, given the condition of (b)(6) despite that, Lance Corporal (b)(6) was being very careful in the process of removing this prisoner out of his cell.

Q Okay. When you say being very careful, was he jerking back and forth or side to side with his head?

A Negative, sir. He was very steady in the process.

Q Okay. When you say very steady, did it appear that Lance Corporal (b)(6) was intentionally being very steady in this process?

A Yes, sir. As to, I guess, finish the process as quickly as possible with no intent of harming the individual.

Q As he was moving (b)(6) he was taking little baby steps or 1-inch or 2-inch steps. Is that correct?

A (b)(6) was assisting himself by doing this on the floor with his feet.

Q Okay. The witness in the witness box just demonstrated a pushing back from the chair. If you wouldn't mind, Staff Sergeant, just so the investigating officer, the Colonel can see, can would you step up and come around the witness box?

A Yes, sir.

Q I hate to do this to you, but --

A Do you want me to demonstrate?

Q Please. Take a spot on the deck.

A If I'm (b)(6) I'm taken out this way.

Q All right. Let me stop you real fast. You are demonstrating (b)(6) position?

A (b)(6)

Q Okay. And the witness has now taken the position on the deck on his back. His knees are up at a 45-degree angle, his hands are on his chest, and his head is up at about a 45-degree angle, shoulders are barely touching the deck. Is that accurately describe how you are laying?

A Yes, sir. Lance Corporal (b)(6) would be behind me, obviously.

Q Like the head region?

A Probably on the head because Lance Corporal (b)(6) is reaching under to support this individual and consequently drag him out by the head area.

Q Okay. And this is the position (b)(6) was in when you saw Lance Corporal (b)(6) cuffing his hand or one hand under his chin?

A Yes, sir.

Q Okay. And the other hand supporting his head?

A Yes, sir.

Q And this was the same position (b)(6) was in when Lance Corporal (b)(6) was dragging him backwards cautiously?

A That is correct.

Q Taking little steps moving backwards?

A Right, sir.

Q Now, you already testified that (b)(6) was assisting him the entire time -- or actually, Lance Corporal (b)(6) was assisting (b)(6) moving. What did you mean by that? Could you demonstrate that?

A As the drag was being performed, (b)(6) is also doing this to push himself to assist himself back.

Q Okay. When you say doing this, just for the record, and you can stand up. I believe that should accomplish what we needed. (b)(6), you just demonstrated (b)(6) was using both feet, both his right and left feet in pushing in the direction that Lance Corporal (b)(6) was moving (b)(6). Correct? (b)(6)

A Sir, right. The assisted method, I guess or movement.

Q Did you hear any choking sounds or gurgling as if somebody was being choked while that move was going on?

A No, sir.

Q Did you see (b)(6) at any time grab his neck as if to say, "I can't breathe?"

A No, sir.

Q Did you see, at any time, (b)(6) try to physically stop Lance Corporal (b)(6) from doing that move?

A No, sir. There was no struggle.

Q Did it seem to you at any time, in your period of observation of that move, that (b)(6) was having difficulty as a result of Lance Corporal (b)(6) ~~contact with him?~~

A Difficulty in what, sir?

Q Did it appear that Lance Corporal (b)(6) was choking or strangling or stopping the breath of (b)(6)?

A No, sir.

Q Had that been the case, as a Staff Sergeant and Staff NCOIC of that Marine, you would have jumped in and stopped him?

A Yes, sir.

Q Had that had that been the case, you are fairly confident that one of the two majors that were present would have stopped him?

A Absolutely, sir.

Q And that didn't happen by either you or the majors.
Correct?

A Right, sir.

Q Now, you said the condition of the (b)(6) at one point --
let's talk about that. (b)(6) -- you know what. I'm
going to step back one quick second. How much total
time did you actually observe Lance Corporal (b)(6)
and (b)(6) on this event?

A When I walked into the cell, the process of taking and
dragging (b)(6) out of his cell was about 10 feet in
length, which is about six to seven seconds, I believe
it took.

Q Okay.

A For him to do this.

Q So you saw him moving him 10 feet. That is as far as it
started from where you entered the holding pen.
Correct?

A Yes, sir.

Q And he was moving in a direction towards you. Is that
right?

A Yes, sir.

Q And he actually, at one point, went right in front of
you and out the hatch of that holding building.
Correct?

A That is correct, yes, sir.

Q So the greatest distance between and you (b)(6) was
10 feet, and the shortest distance was actually less
than one foot as they dragged right in front of you at
one point. Correct?

A That is correct, sir, approximately.

Q (b)(6) was awake?

A He was fully awake. He was conscious.

Q His eyes were going around the room?

A His eyes were open. I do not really recall which --

Q At one point, did he actually look you in the eye as he
went by you?

A Yes, sir.

Q And at that one point, did he give you any indication, again, that he was being choked by Lance Corporal

(b)(6)
A No, sir.

Q Talking about (b)(6) going back to that. You said the condition he was in, he was covered in fecal matter?
A Yes, sir.

Q Are we talking just around the torso region of the body?
A No, sir. Pretty much everywhere, sir.

Q Everywhere, from his feet?
A From head to toe, sir.

Q Knees, waist?
A Yes, sir.

Q Groin?
A Yes, sir.

Q Stomach?
A Yes, sir.

Q Back?
A Well, the back was right on the ground.

Q You couldn't see that. Shoulders?
A Yes, sir.

Q Arms?
A Yes, sir.

Q And you could see a trail of that, where he had been dragged?

A There was a trail, yes, sir.

Q Now, this fecal matter, this defecation, that wasn't anything unique. Defecation was not anything unique to Camp Whitehorse in that all detainees, at one point, you know, had to abide by nature's requirements. Correct?
A Yes, sir. Given the nature of the facility and whatever means we had to run this facility, there was not, per se, individual bathrooms or heads provided for the detainees, so they pretty much did their fecal -- the feces, I should say, you know, right there and then in the cell in a box. So this is something that we would smell on a daily basis, sir.

Q Okay. So you smelled, you know, their head was inside the holding building on a regular basis for all of these detainees and they used, obviously, that head inside?

A Yes, sir.

Q So as a guard, you had pretty common association, or at least frequency, with an exposed head. Correct?

A Yes, sir.

Q And I guess this head was actually an MRE box. Was it not?

A That is correct, sir.

Q So it wasn't anything fancy. It wasn't like this one underground or in some kind of sewage system or anything like that?

A It stayed there until, you know, at a given time where we deemed, "Hey, it's time to take it out." One of the prisoners would be escorted to take it out so we could burn it.

Q Again, so you had regular dealings as a guard there during your guard duties, at least at Camp Whitehorse, with normal fecal material?

A Yes, sir.

Q Now, would you describe the fecal matter that you saw in this instance as normal?

A No, sir.

Q Okay. What about it was different?

A It was more of a diarrhea type, and also the smell was a lot stronger. It was more horrendous than the normal -- I don't know if you can compare it, but I'm saying it was unusual.

Q Okay. Was it was a putrid smell?

A Of an ill person, yes, sir.

Q Of an ill person. This was not something, again, like the smell of every other MRE box that was substituted as a head that you dealt with everyday before that?

A Yes, sir.

Q This was exceptional?

A Yes, sir.

Q Exceptionally putrid?

A Yes, sir.

Q Now, on the subject of fecal matter. The Whitehorse Marines actually had a brief not less than seven days before this, correct, from Doc (b)(6)

A Yes, sir.

Q And in that brief, the very subject matter was the fear of spreading of disease?

A Right.

Q Tuberculosis, dysentery, and the God knows how many other diseases might be spread from close contact --

A With prisoners.

Q -- with prisoners?

A Yes, sir.

Q Specifically, or at least the focus of that brief was, in fact, the handling of fecal matter. Correct?

A Yes, sir.

Q That was a great concern?

A Yes, sir.

Q That was one of the stresses of that brief?

A That is correct, sir.

Q ~~To distance oneself or to protect oneself from having to handle such matter?~~

A That is right, sir.

Q Because not only would it possibly affect that one Marine, but in the close quarters you all were living in, it would affect the entire unit. Correct?

A Yes, sir.

Q Now, let's go back to the 5th of June and your observation of Lance Corporal (b)(6). Was my client wearing a respiratory mask that some doctors might wear in a surgery?

A No, sir.

Q Was he wearing any kind of goggles or any kind of eye protection or face shield?

A No, sir.

Q Was he wearing anything exceptional with the -- well, anything exceptional to that uniform he is in right there?

A No, sir, just leather gloves, that's it.

Q Okay. Some leather gloves.

A Latex gloves, sir.

Q You saw latex gloves?

A Latex or leather, I forget.

Q But he was wearing gloves, nonetheless?

A Latex gloves, right.

Q Okay. Were you able to determine whether there was fecal matter even on those gloves?

A Yes, sir.

Q And there was?

A Yes, sir.

Q This is only, again, less than a week after that brief?

A Yes, sir.

Q Now, we've already -- a couple of minutes ago you read your own handwritten statement, kind of refreshed your memory. And in that -- I just need to clarify this. In that you talked about events that occurred with

(b)(6) falling into some Constantino wire?

A Yes, sir.

Q Do you recall writing that statement?

A Mm-hmm.

Q That's based upon what you were told, not what you observed. Correct?

A That is correct, sir.

Q Okay. Let's talk about Lance Corporal (b)(6) At any time at Camp Whitehorse, did you ever observe Lance Corporal (b)(6) use unnecessary force in the handling of EPWs or detainees?

A No, sir.

Q At anytime?

A Negative, sir.

Q And that is using the same definition that you already applied or you already adopted during your direct?
A Yes, sir.

Q That would include, obviously, (b)(6)
A That is correct.

Q Now, you personally observed, at least partially, (b)(6) indoc, his indoctrination or his receiving process --
A Yes, sir.

Q -- on the evening of the 3d. And you've already testified that Lance Corporal (b)(6) was there, present, and actually you had conducting it. Sergeant (b)(6) was he there?
A Yes, sir.

Q Sergeant Pittman?
A Yes, sir.

Q Was Major Paulus there?
A Yes, sir.

Q Was Lance Corporal (b)(6)
A No, sir.

Q Was Lance Corporal (b)(6) there when (b)(6) was removed from the vehicles before that indoc?
A If he was, he might have been as a security team, but I don't recall. I don't think he was.

Q You do not remember him being there at all?
A No, sir.

Q And you don't remember him, again, being there at the indoc?
A That is correct, sir. It was not his shift, so he would not be there unless he was needed. But I don't remember him being there.

Q Okay. I mean, from your memory, as you sit here today testifying under oath, you do not recall Lance Corporal (b)(6) being a part of the receiving or indoctrination process?
A No, sir.

Q Now, you've already testified a little bit that from day one it appeared to you that (b)(6) wasn't right. I think that was your words?

A Yes, sir. Just based on the amount of prisoners that we handled. Up to that point, which was close to 200, we already have a good idea of what they look like or, you know, their reaction. And this individual was, you know, based on his slow movement and his oriented ways about him, you know, I thought that there was something wrong with him.

Q He was lethargic?

A Yes, sir.

Q And sluggish?

A Yes, sir.

Q Non-responsive?

A Non-responsive, right.

Q And this was all based upon observations of (b)(6) on the 3d of June?

A Yes, sir. When he first arrived at our facility.

Q And subsequently, bolstered by your observations on the 4th of June?

A Yes, sir.

Q So this is an opinion that you rendered either prior to what you saw on the 5th of June?

A Right. I got reports that he was not eating, just drinking very little water.

Q So he wasn't eating. He wasn't drinking water?

A Very little.

Q Very little?

A Yes, sir.

DC (Captain Studenka): Now, I'm going to try to revisit what Captain McCall was going over with you.

Sir, if I could hand Staff Sergeant (b)(6) IO Exhibit 35, both page 1 and 2?

IO: All right.

Questions by defense counsel (Captain Studenka):

Q Take a peek, particularly at page 2.

A Yes, sir.

Q The page that you weren't able to authenticate. Look at the left most column on that page, three to the bottom.

IO: What was that last part?

DC (Captain Studenka): Three to the bottom, sir. Three lines from the bottom?

WIT: On which page, sir?

DC (Captain Studenka): On the page that you haven't identified necessarily as (b)(6) The one in issue. I'm trying to get this in?

WIT: Yes, sir.

DC (Captain Studenka): Could you describe what is in the block or the column, again, three from the bottom on the left most side.

IO: In general terms or are you asking him to provide specifics?

DC (Captain Studenka): Specifics, sir.

IO: Well, if it's not introduced, then you can't do that. I mean, do you want to authenticate it yourself, or are you going to concede that it's the logbook?

DC (Captain Studenka): Okay, sir. If you could read --

IO: If you are going to ask him to read from the document, it ought to be admitted into evidence first. Don't you think? I mean, what is good for the goose is good for the gander.

DC (Captain Studenka): Sir. I would just ask then that the witness just read to himself that block.

WIT: Line 3, sir?

DC (Captain Studenka): Line 3?

WIT: From the bottom.

DC (Captain Studenka): Left most column. Yes.

WIT: It says --

DC (Captain Studenka): No, don't read it. Just read it to yourself and look up at me when you are done.

WIT: Okay.

The witness did as directed.

Questions by defense counsel (Captain Studenka):

Q Is what is contained in that block in any way allow you to enable you to recall what those -- that line or that column refers to? Who it refers to, more specifically? That is just a yes or no, I guess. Does that assist you in any way as to attributing who that whole column belongs to?

IO: The column or that one entry?

DC (Captain Studenka): The row. I'm sorry.

WIT: Well, this is -- it's kind of general, sir, because we did handle other prisoners that were related to this incident.

Questions by defense counsel (Captain Studenka):

Q I understand. Does it in any way assist you in attributing it to a select group of detainees?

A Yes, sir.

Q Okay. And who would that group be?

A The group could be these three individuals that we had just received.

IO: You said could be or is?

WIT: Well, sir.

IO: I mean, are you speculating right now?

WIT: Yes, sir. It could be those individuals since we processed other detainees that were related to this incident.

IO: I think what Captain Studenka is getting at is, although the copy I have is not terrific, it appears to be some sort of nomenclature or serial number there associated with that third entry up from the bottom that may be specific to a particular capture of an individual or individuals --

DC (Captain Studenka): Yes, sir, that is it.

IO: Do you recognize those numbers?

THE WITNESS: Yes, sir.

IO: Nomenclature there as being specific to the capture of any one individual or individuals?

WIT: This particular piece of information would indicate that it's these three individuals that were processing that refers to.

IO: The three meaning (b)(6) and the (b)(6)

WIT: Yes, sir.

IO: Okay.

DC (Captain Studenka): And if I could, sir, just from that.

IO: Well, it sounds like it might have --

And is that your handwriting?

WIT: Yes, sir.

DC (Captain Studenka): Take that in conjunction with the first page now, and if you put them line by line, can you now with confidence say who those last three lines on the second page actually refer to?

WIT: Yes, sir. Given the information there, yes.

DC (Captain Studenka): Okay. At this time then, sir, we'd ask that the second page of Investigative Exhibit 35 be admitted?

IO: Well, let me ask you one additional question: When you say it does give you some confidence as to who it refers to, it does refer specifically to (b)(6) and the (b)(6) (b)(6)?

WIT: Yes, sir. Given the uniqueness of that M-16A2 serial number, you know, we did not capture, from what I remember, other prisoners -- I'm sorry. We did not receive other prisoners besides these three that related to this rifle.

IO: Okay. So any objection?

TC: There is no objection, sir.

IO: Okay. IO Exhibit 35 in its entirety, both pages, will be admitted at this point.

Questions by defense counsel (Captain Studenka):

Q And just so everybody is on the same page, how did you mark (b)(6) condition upon arrival?

A If the line relates to (b)(6), that would be fair, sir.

Q Okay. What is the highest rating he could have received?

A Good.

DC (Captain Studenka): All right, sir. I'm going to retrieve --

IO: Well, I have another question in light of that.

What is the gradation? What's the scale here? Does it go from fair to good? Is there something in between fair and good?

CC (Mr. Zimmermann): No, sir. Good, fair, and poor.

IO: Good, fair, and poor. All right. Thank you.

Questions by defense counsel (Captain Studenka):

Q Had you have had visual signs on the exterior, on his body, bruising, cuts, you would have put that in that column to describe that?

A Yes, sir, more than likely. If they were like obvious bruises or signs, I would have wrote it.

Q But your rendering of the opinion of fair was based upon his behavior?

A Yes, sir. Just the way he looked.

Q And the sluggish behavior that you have already described?

A Yes, sir. It was not a medically proven diagnose given to me. It was just my interpretation of what the prisoner would look like at that moment.

Q Again, because you felt that he appeared ill?

A Yes, sir.

DC (Captain Studenka): At this time I'll retrieve that, sir. Sir, you already have both page 1 and 2?

IO: I think I have the exhibit, yes.

Questions by defense counsel (Captain Studenka):

Q Let's talk about the written statement, 6 June, the day after the death. You were ordered by Major Paulus to inform the Marines that they were to produce a written statement of anything they remembered with respect to

(b)(6) Correct?

A That is correct.

Q And that order is one that you carried out in that you did, in fact, get your Marines together and tell each and every of them, including Lance Corporal (b)(6) that they were to produce a written statement describing their interaction with (b)(6)

A Yes, sir.

Q And that order was given out to with the intent that it be carried out?

A That is correct.

Q This is not something they had discretion to do. Correct?

A Correct, sir.

Q And in giving that order, you didn't at any time inform them of their 31b rights?

A No, I did not, sir.

Q You didn't tell them that they might be suspected of a crime?

A No, sir.

Q You didn't tell them that they might, in fact, that this statement might, in fact, be used against them at a subsequent court-martial in any proceeding?

A No, sir.

Q And it was your understanding that higher was seeking these statements because they had begun an investigation at that time. Is that correct -- into the death of

(b)(6) ?

A Yes, sir. It was, I guess, an obvious, you know, process at that time to get statements based on the fact that this person had passed away.

Q And you actually collected each of those statements?

A Yes, sir.

Q And pursuant to that higher intent, you turned them over to your chain of command. Correct?

A To Major Paulus, that is correct.

Q I guess when I'm referring to higher, we're talking about the division which generally issued these orders?

A Yes, sir.

Q Now, on the issue of actually -- of the Marines of Camp Whitehorse being interrogated by NCIS. At some point within weeks after his death, each of the Marines at Camp Whitehorse went to be interviewed by NCIS. Correct?

A Yes, sir. Or transferred to Kuwait.

Q Each of the Marines went down to Kuwait to talk to NCIS?

A Yes, sir.

Q And they went down to Kuwait because they were ordered to go down to Kuwait to talk to NCIS. Correct?

A That is correct.

Q Ordered by Major Paulus, the OIC?

A Yes, sir.

Q Ordered by yourself, the Staff NCOIC?

A Yes, sir.

Q And before departing for Kuwait, they were told from both yourself and Major Paulus to tell everything correct?

A That's correct.

Q There was nothing to hide here, so don't worry about it. Tell everything. Correct?

A That is correct.

Q And at no time by either yourself or to your knowledge, or Major Paulus, at no time were they ever given 31b rights at that point. Correct?

A That is right.

Q They were not told --

TC: Objection --

IO: I'm sorry. Go ahead.

TC: I'm not sure. I believe it's speculative. He's talking about whether all the Marines were given 31b rights or not.

IO: I'm confused about the timing of what you are talking about now, whether the NCIS agents advised them of the rights, or whether Paulus or Staff Sergeant (b)(6) applies about their in ordering them to go to NCIS.

DC (Captain Studenka): Yes, sir.

IO: You need to clarify that with me.

Questions by defense counsel (Captain Studenka):

Q Before they left to go to Kuwait to talk with NCIS, both yourself and Major Paulus ordered Marines from Camp Whitehorse at various times to go down and talk to them. Correct?

A Yes, sir.

Q And before they departed, before the Marines of Camp Whitehorse departed to go speak to NCIS, they were told to tell everything. Correct?

A Yes, sir.

TC: Objection. Sir, just relevance as to who we're talking

about at this point. They say they and the -- what Marines are we talking about? All of the Marines? All of the guards? A couple of guards?

DC (Captain Studenka): I intended to get to that, sir.

IO: I'll give you some leeway, but the point is well taken that you are generalizing here.

DC (Captain Studenka): Yes, sir.

Questions by defense counsel (Captain Studenka):

Q With respect to Lance Corporal (b)(6) before he went to Kuwait to be interviewed by NCIS, he along with the other Marines were told to air everything. Correct?

A Yes, sir.

Q To tell everything?

A Yes, sir.

Q That there was nothing to hide because nothing wrong had been done?

A Correct.

Q And before they left, before Lance Corporal (b)(6) left, he was never informed of his 31b rights by yourself?

A That is correct.

Q Or by Major Paulus, to your knowledge?

A That is correct.

Q And again, this is one of those orders that he didn't have discretion. Right?

A Yes, sir.

Q He was to go down there and give a statement?

A Yes, sir.

Q Again, he wasn't told that that statement might be used against him prior to leaving for NCIS?

A Yes, sir.

TC: Objection. I'm not sure that's -- I don't think -- it's speculative, sir. I'm not sure that is what he has testified go.

IO: I don't think -- it doesn't sound like he's speculating to me. But quite frankly, I'm not so sure. Did you question these Marines before they left for Kuwait to be interviewed by NCIS?

WIT: In what way, sir?

IO: Did you ask them questions about the facts of this case?

WIT: No, sir. I was just given orders that --

IO: To go to NCIS.

WIT: -- that's where the Marines needed to go and speak to NCIS and that was it.

IO: I'm not so sure Article 31 rights are even necessary if you are just giving an order to go someplace. If their questioning is going to ensue, then perhaps. But go ahead, I'll let you carry on your examination.

Questions by defense counsel (Captain Studenka):

Q With respect to Lance Corporal (b)(6) before he left, he was ordered to go down and make a statement. Correct?

A Yes, sir.

Q And that was an order by you. Right?

A Yes, sir.

Q Also an order from Major Paulus?

A That is correct.

Q At that point, they were not advised of any rights? Is that what you are saying, trying to get at?

DC (Captain Studenka): That's it, sir.

IO: Mr. Higgins?

[END OF PAGE]

CROSS-EXAMINATION

Questions by Mr. Higgins:

DC (Mr. Higgins): IO 36 next in order?

IO: I'm sorry?

DC (Mr. Higgins): IO 36 --

IO: Yes, that's correct.

Questions by Mr. Higgins:

Q Good afternoon, Staff Sergeant (b)(6) My name is Keith Higgins. I'm an attorney for Major Paulus.

A Good afternoon, sir.

Q Handing you what has been marked as IO 36. I'd ask you to look that over to yourself and look up at me when you are finished.

The witness did as directed.

Q Staff Sergeant (b)(6) do you recognize Investigative Officer Exhibit 36 to be a grant of immunity?

A Yes, sir.

~~Q Do you recognize it to be a (inaudible).~~

~~A Yes, sir.~~

Q Have you received that document before?

A Yes, sir.

CC (Mr. Higgins): Thank you. I'd ask that Investigative Officer 36 be admitted at this time.

IO: Any objection from any counsel?

TC: No, sir.

IO: Mr. Zimmermann?

CC (Mr. Zimmermann): No, sir.

DC (1stLt Folk): No, sir.

IO: IO 36 will be admitted.

Questions by civilian counsel (Mr. Higgins):

Q Staff Sergeant (b)(6) after you had deployed to Iraq with 2/25 and then moved to Kuwait, when did you return to the United States -- continental United States?

A On or about August 1st, sir.

Q Where did you return to?

A Camp Lejeune, North Carolina. Cherry Point to be exact.

Q And besides your trip to Camp Pendleton today or for this testimony, this hearing, had you been out to Camp Pendleton between the time you got to Lejeune until this trip right now?

A Just one time in December, sir.

Q And that one time in December, is that when you testified in the Article 32 hearing of Major (b)(6)?

A Yes, sir.

Q Prior to your questioning today and -- actually, prior to your questioning -- excuse me. During the Article 32 in Major (b)(6) case, did Captain McCall ask you questions?

A Yes, sir.

Q Okay. Prior to speaking with him during that Article 32, had you ever spoken to Captain McCall?

A Just one time on the phone. I think he called me to let me know that I would be coming down here.

Q Did you talk to anyone else from the prosecution office during the period you got to Camp Lejeune and the time you came in December to testify?

A No, sir.

Q From the time you've testified, you testified in December in Major (b)(6) Article 32. From that time to testifying today, have you had any conversation with either prosecutors?

A No, sir. Before this, sir?

Q Before today. Between December and the time you took the stand this morning?

A Yes, I did, sir.

Q Okay. Which prosecutor?
A Captain McCall.

Q And how many times did you talk to him?
A Just once, sir.

Q Was that by telephone or in person?
A In person.

Q When was that?
A That was earlier today, before I took the stand, like around 1200, 1130ish.

Q Thank you. You testified that you received training at Camp Lejeune in the treatment of enemy prisoners of war?
A Yes, sir.

Q You testified that Major Paulus gave that training?
A Yes, sir.

Q That training did not cover anything you do with running a detention facility, did it?
A No, sir.

Q Prior to becoming a senior noncommissioned officer involved with guarding enemy prisoners of war in the detention facility, had you received any training to do that?
A No, sir.

Q Tallil Air Force Base. Am I saying that correctly?
A Yes, sir.

Q Is that about 3-miles away from Camp Whitehorse?
A Further than that, maybe five.

Q Five miles?
A Yes, sir.

Q How many kilometers is it?
A I'd say like about five, six clicks, sir. Kilometers, I think about ten kilometers or 12 kilometers.

Q When prisoners were brought into the Camp Whitehorse detention facility that we have up there on the drawing, they'd be sandbagged with bags over their heads?
A Yes, sir. Most of the time the capturing units would bring them already sandbagged and cuffed.

Questions by defense counsel (Captain Studenka):

Q Take a peek, particularly at page 2.

A Yes, sir.

Q The page that you weren't able to authenticate. Look at the left most column on that page, three to the bottom.

IO: What was that last part?

DC (Captain Studenka): Three to the bottom, sir. Three lines from the bottom?

WIT: On which page, sir?

DC (Captain Studenka): On the page that you haven't identified necessarily as (b)(6). The one in issue. I'm trying to get this in?

WIT: Yes, sir.

DC (Captain Studenka): Could you describe what is in the block or the column, again, three from the bottom on the left most side.

IO: In general terms or are you asking him to provide specifics?

DC (Captain Studenka): Specifics, sir.

IO: Well, if it's not introduced, then you can't do that. I mean, do you want to authenticate it yourself, or are you going to concede that it's the logbook?

DC (Captain Studenka): Okay, sir. If you could read --

IO: If you are going to ask him to read from the document, it ought to be admitted into evidence first. Don't you think? I mean, what is good for the goose is good for the gander.

DC (Captain Studenka): Sir. I would just ask then that the witness just read to himself that block.

WIT: Line 3, sir?

DC (Captain Studenka): Line 3?

WIT: From the bottom.

DC (Captain Studenka): Left most column. Yes.

WIT: It says --

DC (Captain Studenka): No, don't read it. Just read it to yourself and look up at me when you are done.

WIT: Okay.

The witness did as directed.

Questions by defense counsel (Captain Studenka):

Q Is what is contained in that block in any way allow you to enable you to recall what those -- that line or that column refers to? Who it refers to, more specifically? That is just a yes or no, I guess. Does that assist you in any way as to attributing who that whole column belongs to?

IO: The column or that one entry?

DC (Captain Studenka): The row. I'm sorry.

WIT: Well, this is -- it's kind of general, sir, because we did handle other prisoners that were related to this incident.

Questions by defense counsel (Captain Studenka):

Q I understand. Does it in any way assist you in attributing it to a select group of detainees?

A Yes, sir.

Q Okay. And who would that group be?

A The group could be these three individuals that we had just received.

IO: You said could be or is?

WIT: Well, sir.

IO: I mean, are you speculating right now?

WIT: Yes, sir. It could be those individuals since we processed other detainees that were related to this incident.

IO: I think what Captain Studenka is getting at is, although the copy I have is not terrific, it appears to be some sort of nomenclature or serial number there associated with that third entry up from the bottom that may be specific to a particular capture of an individual or individuals --

DC (Captain Studenka): Yes, sir, that is it.

IO: Do you recognize those numbers?

THE WITNESS: Yes, sir.

IO: Nomenclature there as being specific to the capture of any one individual or individuals?

WIT: This particular piece of information would indicate that it's these three individuals that were processing that refers to.

IO: The three meaning (b)(6) and the (b)(6)

WIT: Yes, sir.

IO: Okay.

DC (Captain Studenka): And if I could, sir, just from that.

IO: Well, it sounds like it might have --

And is that your handwriting?

WIT: Yes, sir.

DC (Captain Studenka): Take that in conjunction with the first page now, and if you put them line by line, can you now with confidence say who those last three lines on the second page actually refer to?

WIT: Yes, sir. Given the information there, yes.

DC (Captain Studenka): Okay. At this time then, sir, we'd ask that the second page of Investigative Exhibit 35 be admitted?

IO: Well, let me ask you one additional question: When you say it does give you some confidence as to who it refers to, it does refer specifically to (b)(6) and the two (b)(6) (b)(6)

WIT: Yes, sir. Given the uniqueness of that M-16A2 serial number, you know, we did not capture, from what I remember, other prisoners -- I'm sorry. We did not receive other prisoners besides these three that related to this rifle.

IO: Okay. So any objection?

TC: There is no objection, sir.

IO: Okay. IO Exhibit 35 in its entirety, both pages, will be admitted at this point.

Questions by defense counsel (Captain Studenka):

Q And just so everybody is on the same page, how did you mark (b)(6) condition upon arrival?

A If the line relates to (b)(6) that would be fair, sir.

Q Okay. What is the highest rating he could have received?

A Good.

DC (Captain Studenka): All right, sir. I'm going to retrieve --

IO: Well, I have another question in light of that.

What is the gradation? What's the scale here? Does it go from fair to good? Is there something in between fair and good?

CC (Mr. Zimmermann): No, sir. Good, fair, and poor.

IO: Good, fair, and poor. All right. Thank you.

Questions by defense counsel (Captain Studenka):

Q Had you have had visual signs on the exterior, on his body, bruising, cuts, you would have put that in that column to describe that?

A Yes, sir, more than likely. If they were like obvious bruises or signs, I would have wrote it.

Q But your rendering of the opinion of fair was based upon his behavior?

A Yes, sir. Just the way he looked.

Q And the sluggish behavior that you have already described?

A Yes, sir. It was not a medically proven diagnose given to me. It was just my interpretation of what the prisoner would look like at that moment.

Q Again, because you felt that he appeared ill?

A Yes, sir.

DC (Captain Studenka): At this time I'll retrieve that, sir. Sir, you already have both page 1 and 2?

IO: I think I have the exhibit, yes.

Questions by defense counsel (Captain Studenka):

Q Let's talk about the written statement, 6 June, the day after the death. You were ordered by Major Paulus to inform the Marines that they were to produce a written statement of anything they remembered with respect to (b)(6). Correct?

A That is correct.

Q And that order is one that you carried out in that you did, in fact, get your Marines together and tell each and every of them, including Lance Corporal Hernandez, that they were to produce a written statement describing their interaction with (b)(6).

A Yes, sir.

Q And that order was given out to with the intent that it be carried out?

A That is correct.

Q This is not something they had discretion to do. Correct?

A Correct, sir.

Q And in giving that order, you didn't at any time inform them of their 31b rights?

A No, I did not, sir.

Q You didn't tell them that they might be suspected of a crime?
A No, sir.

Q You didn't tell them that they might, in fact, that this statement might, in fact, be used against them at a subsequent court-martial in any proceeding?
A No, sir.

Q And it was your understanding that higher was seeking these statements because they had begun an investigation at that time. Is that correct -- into the death of (b)(6)
A Yes, sir. It was, I guess, an obvious, you know, process at that time to get statements based on the fact that this person had passed away.

Q And you actually collected each of those statements?
A Yes, sir.

Q And pursuant to that higher intent, you turned them over to your chain of command. Correct?
A To Major Paulus, that is correct.

Q I guess when I'm referring to higher, we're talking about the division which generally issued these orders?
A Yes, sir.

Q Now, on the issue of actually -- of the Marines of Camp Whitehorse being interrogated by NCIS. At some point within weeks after his death, each of the Marines at Camp Whitehorse went to be interviewed by NCIS. Correct?
A Yes, sir. Or transferred to Kuwait.

Q Each of the Marines went down to Kuwait to talk to NCIS?
A Yes, sir.

Q And they went down to Kuwait because they were ordered to go down to Kuwait to talk to NCIS. Correct?
A That is correct.

Q Ordered by Major Paulus, the OIC?
A Yes, sir.

Q Ordered by yourself, the Staff NCOIC?
A Yes, sir.

Q And before departing for Kuwait, they were told from both yourself and Major Paulus to tell everything correct?

Q There was nothing to hide here, so don't worry about it.
Tell everything. Correct?

Q And at no time by either yourself or to your knowledge, or Major Paulus, at no time were they ever given 31b rights at that point. Correct?

Q They were not told --

IO: I'm sorry. Go ahead.

IO: I'm confused about the timing of what you are talking about now, whether the NCIS agents advised them of the rights or whether Paulus or Staff Sergeant (b)(6) applies about their in ordering them to go to NCIS.

DC (Captain Studenka): Yes, sir.

Questions by defense counsel (Captain Studenka):

A Yes, sir.

A Yes, sir.

about at this point. They say they and the -- what Marines are we talking about? All of the Marines? All of the guards? A couple of guards?

DC (Captain Studenka): I intended to get to that, sir.

IO: I'll give you some leeway, but the point is well taken that you are generalizing here.

DC (Captain Studenka): Yes, sir.

Questions by defense counsel (Captain Studenka):

Q With respect to Lance Corporal (b)(6) before he went to Kuwait to be interviewed by NCIS, he along with the other Marines were told to air everything. Correct?

A Yes, sir.

Q To tell everything?

A Yes, sir.

Q That there was nothing to hide because nothing wrong had been done?

A Correct.

Q And before they left, before Lance Corporal (b)(6) left, he was never informed of his 31b rights by yourself?

A That is correct.

Q Or by Major Paulus, to your knowledge?

A That is correct.

Q And again, this is one of those orders that he didn't have discretion. Right?

A Yes, sir.

Q He was to go down there and give a statement?

A Yes, sir.

Q Again, he wasn't told that that statement might be used against him prior to leaving for NCIS?

A Yes, sir.

TC: Objection. I'm not sure that's -- I don't think -- it's speculative, sir. I'm not sure that is what he has testified go.

IO: I don't think -- it doesn't sound like he's speculating to me. But quite frankly, I'm not so sure. Did you question these Marines before they left for Kuwait to be interviewed by NCIS?

WIT: In what way, sir?

IO: Did you ask them questions about the facts of this case?

WIT: No, sir. I was just given orders that --

IO: To go to NCIS.

WIT: -- that's where the Marines needed to go and speak to NCIS and that was it.

IO: I'm not so sure Article 31 rights are even necessary if you are just giving an order to go someplace. If their questioning is going to ensue, then perhaps. But go ahead, I'll let you carry on your examination.

Questions by defense counsel (Captain Studenka):

Q With respect to Lance Corporal (b)(6) before he left, he was ordered to go down and make a statement. Correct?

A Yes, sir.

Q And that was an order by you. Right?

A Yes, sir.

Q Also an order from Major Paulus?

A That is correct.

Q At that point, they were not advised of any rights? Is that what you are saying, trying to get at?

DC (Captain Studenka): That's it, sir.

IO: Mr. Higgins?

[END OF PAGE]

CROSS-EXAMINATION

Questions by Mr. Higgins:

DC (Mr. Higgins): IO 36 next in order?

IO: I'm sorry?

DC (Mr. Higgins): IO 36 --

IO: Yes, that's correct.

Questions by Mr. Higgins:

Q Good afternoon, Staff Sergeant (b)(6). My name is Keith Higgins. I'm an attorney for Major Paulus.
A Good afternoon, sir.

Q Handing you what has been marked as IO 36. I'd ask you to look that over to yourself and look up at me when you are finished.

The witness did as directed.

Q Staff Sergeant (b)(6), do you recognize Investigative Officer Exhibit 36 to be a grant of immunity?

A Yes, sir.

~~Q Do you recognize it to be a (inaudible).~~

~~A Yes, sir.~~

Q Have you received that document before?

A Yes, sir.

CC (Mr. Higgins): Thank you. I'd ask that Investigative Officer 36 be admitted at this time.

IO: Any objection from any counsel?

TC: No, sir.

IO: Mr. Zimmermann?

CC (Mr. Zimmermann): No, sir.

DC (1stLt Folk): No, sir.

Q Why did they have sandbags over their heads, if you know?

A That was to disorient or not to allow the prisoner to know where he was being taken to for security reasons.

Q Okay. You mentioned security reasons. You talked about during the indoctrination that there would be both a search team and a covering team. Right?

A Yes, sir.

Q And the covering team would be armed?

A Yes, sir.

Q Why was that necessary?

A In the event that a prisoner was to attempt to escape or attack one of us, one of the Marines.

Q Security is a large concern?

A Yes, sir.

Q Were you concerned for your own personal safety?

A For my personal safety and, obviously, the safety of my Marines.

Q And did Major Paulus relate to you that he was concerned for the safety of Marines?

A Yes, sir.

Q Major (b)(6) relayed that to you?

A Yes, sir.

Q There was some discussion during your testimony earlier, there was a picture put up, do you remember the picture was put up and I guess the sign said terrordome?

A Yes, sir.

Q On the side of the wall?

A Yes, sir.

Q That writing "terrordome" was there before you ever got to the detention facility?

A Yes, sir.

Q Do you recall at some point in April of 2003, while you were working at the detention facility, that an inspection team or a team of higher ranking officers from the MEU came through for inspection?

A Yes, sir. The MEU commander to be exact.

Q The MEU commander. And that was, at the time, Colonel
A now General Wallhouser. Correct?
Yes, sir.

Q And he inspected the facility we see in this drawing
A right here?
Yes, that's correct, sir.

Q He came in and he walked around that facility?
A Yes, sir.

Q And he went into those buildings?
A Yes, sir.

Q And he went into the doorway of the building where it
A says terrordome next to it?
Yes, sir. I'm certain. He had to pass through there to
get to the holding facility.

Q I'm sorry. I couldn't hear you.
A He had to pass through there to get to the facility, the
rest of the facility.

Q Did you ever find out what the Colonel now General's
A impressions of the facility were?
He was very pleased with the way that we were running
the prison and how we had improved and fortified the
place.

Q And that was sometime in April?
A Yes, sir. There were no objections or anything on how
we would do things -- or we were doing things.

Q You talked -- when you'd come in to work at the
A detention facility, at that time Major (b)(6) was in
charge of -- the OIC. Correct?
Yes, sir.

Q And at some point, about two months after that, Major
A Paulus becomes the OIC?
Yes, sir.

Q And that would have been sometime in the end of May?
A Yes, sir.

Q Do you recall the exact date?
A No, sir.

Q So if I said May 30th, would that ring a bell or sound correct?

A That sounds about right, sir, yeah.

Q And he was really only the OIC for about a week or so when prisoner (b)(6) was brought in?

A Yes, sir.

Q But yet, in that time from around the 30th of May until when (b)(6) was brought in, Major Paulus made some improvements to the facility?

A Yes, he did, sir.

Q You've already testified that he set up showers?

A Yes, sir.

Q So that the detainees would be able to clean themselves?

A Yes, sir. And they could also conduct their praying because the only way they could do it is if they were clean. So that was an accommodation as far as like ethnic is concerned.

Q So for a religious concern?

A Yes, sir.

Q And that actually allowed them to actually be able to pray?

A Yes, sir.

Q What was the reaction from the detainees of that ability?

A They were very happy, sir.

Q You also testified earlier that health care, I believe you said was a really big deal to Major Paulus?

A Yes, sir.

Q Could you explain what you meant by that?

A Major Paulus was always concerned, you know, obviously the health, the safety and health conditions of the prisoners. And so he consistently would come by and check on the prisoners himself. And if required, you know, get a Corpsman in there as often as he could to treat prisoners that had come with bruises, lacerations or whatnot, and make sure they had clean, you know, dressings on them and be properly taken care of.

Q And, in fact, he also made sure that they got deodorant?
A Yes, sir. He told us to, you know, perhaps share some of our personal care things that came in care packages from our families. At one point, he told us that -- he actually gave me money out of his own pocket to go and buy these prisoners slippers and, you know, maybe whatever clothing we could gather to give them because after a while these people being there, their clothing would just shred apart.

Q And issuing also deodorant, there was other things like toothpaste?
A Toothpaste, deodorant, baby wipes, stuff like that that they'd probably never seen before.

Q Now, you said that you'd come by and if you saw someone that appeared to have lacerations or bruises, scrapes or bruises, he would want a Corpsman to see them. Correct?
A That is correct, sir.

Q Did that situation happen often? I mean, did you have a lot of prisoners with bruises?
A Yes, sir. We would receive prisoners with bruises all the time, just from whatever the circumstance of capture was. And that is where we came and the Corpsman that were assigned to the jail, that was their duty.

Q And would the flexicuffs cause problems on the wrists?
A If applied too tightly on the wrist, absolutely, yes, sir.

Q And did you see that?
A Oh, yes, sir.

Q Major Paulus also was able to get a translator assigned to the prison?
A Yes, sir.

Q Prior to him doing that, you didn't have your own translator?
A No, sir.

Q You had either, if you wanted someone to take off their shirt or jacket, you had to motion for it?
A Yes, sir.

Q You had to try to find some of the few words you knew, I think you testified a lot of you were goom?
A Yes, sir. Goom.

Q Goom, which means stand up in Arabic.
A Yes, sir.

Q But you did the best you could with very limited Arabic knowledge?
A Yes, sir.

Q And that translator that he was able to get assigned to you was Sergeant (b)(6)?
A That is correct, sir.

Q And Sergeant (b)(6) began work as a translator for you full time sometime around the 6th or 5th of June?
A That sounds about right, sir.

Q You've given a definition previously of excessive force. Do you recall that definition you gave to Captain McCall?
A Yes, sir.

Q You never saw any of the guards using excessive force?
A No, sir.

Q You never talked to Major Paulus about any of the guys using excessive force?
A No, sir.

Q And by talk I mean reported to him that a guy had used excessive force?
A No, sir.

Q Did any of the prisoners ever complain to you that someone had used excessive force on them?
A Prisoners no, sir. Never.

Q During the in processing of (b)(6) you testified that you believe the translator was present and it was Sergeant (b)(6)?
A Yes, sir.

Q Could it have been Lance Corporal (b)(6)?
A I know he was a frequent visitor of our jail whenever they would bring prisoners and -- are you referring to that exact time.

Q That exact time. The 3d of June, the in processing of (b)(6) ?
A Sergeant Higgins didn't start working with us until the sixth you said, sir.
Q I said the fourth or fifth.
A Right. This is the third. Then yeah, that would be Sergeant Higgins.
Q Don't answer the question. Don't let me put words into your mouth. The question I'm asking you is: Could Lance Corporal (b)(6) have been the person there translating rather than Sergeant (b)(6) on June 3d?
A Yes, sir. Thinking back nine months ago, I mean, it's a lot of stuff, you get confused and I might have gotten the wrong translators there, but I know there was a translator there.

CC (Mr. Higgins): Actually, that is correct the different day. Did they to pull a picture out.

TC: They are numbered, so it will be easy.

Questions by civilian counsel (Mr. Higgins):

Q Showing Staff Sergeant (b)(6) what has been marked as 9 of 13, but I believe it's now 9 of 11. Actually 9 of 11. You previously indicated that that paragraph shows the two in processing pens as well as the two holding buildings. Correct?
A Yes, sir.
Q Is the hand washing station visible on that photograph?
A Yes, sir.
Q Would you hold it up towards the investigating officer and point to where it is?
A Right here, sir.
Q That is the hand washing station?
A Right there where I pointed earlier.
Q The spot on the picture which the witness has indicated is on the left -- right, excuse me, the right hand side of the building. So the northernmost building in between the in processing pen and that holding building that is actually behind a support post.
A It was green.

Q It was green?
A It was green in color, so you could see 'em.

Q Returning that to the pile on top of the ELMO. The next spot you just indicated was where you were when the search by Lance Corporal (b)(6) of (b)(6) was being conducted?
A Yes, sir.

Q And there is obstruction there from you being able to fully see it?
A Yes, sir.

Q Handing back 9 of 11, exhibit 8. Would you please hold it up to the investigating officer and indicate which wall would be wall would be used -- which wall was used for the search of (b)(6)
A Right over here, adjacent to the water station, to the hand wash station.

Q Okay. To the where those markings are?
A Right next to it, yes, sir.

Q Let the record reflect that the witness has indicated the section on the photographs to the right of the first set of windows in the northernmost holding building, there appears to be some form of graffiti at the spot where the strip search -- where the search would have been conducted.

Q And that's the northernmost is the right building on this photograph. It wasn't light out when (b)(6) was processed?
A No, sir, it was dark.

Q The opposite of light is dark. You mentioned on Captain Studenka's questioning that Major Paulus was present?
A Yes, sir.

Q During the in processing with (b)(6)
A Yes, sir.

Q During the in process of (b)(6), did Major Paulus come over and speak with you?
A I'm sure he did. Specific to what, sir?

Q I'm asking you. Was it common for him to come over and speak to you?

A Oh, absolutely, yes, sir.

Q And you were making entries into the logbook?

A Yes, sir. We're always constantly in communication with each other.

Q And would it be common for Major Paulus to review those logbook entries?

A Yes, sir.

CC (Mr. Higgins): May I have a moment.

Q If the prisoners needed new clothing, you didn't have any clothing to provide them?

A No, sir. I mean, if it was scrub something, we would not give them our uniform, that's for sure. But like a white T-shirt or something, yeah.

Q No, you wouldn't supply it?

A Yes, sir.

CC (Mr. Higgins): Thank you.

IO: Is that the end of your cross-examination?

CC (Mr. Higgins): Yes, sir.

IO: Lieutenant Folk?

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt

1. Which guard brought (b)(6) to the HLT for questioning
2. Was the information from the questioning shared with the camp personnel i.e. that he had taken part in the attack
- 3.
- 4.
- 5.

Col J.J. Coghlan
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT CXI

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

S6T

1. Do you know, or did you get to know any members of 2/25? If so, whom? How well?

2.

3.

4.

5.

Robert W Sprague

MEMBER'S PRINTED NAME

Robert W Sprague

MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT

CXII

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt

1. - How many other HET teams or personnel, if any, worked with 2/25 Guards during those 3 months?
2. Describe the relationship you developed with Lt Col Ray if any? Sgt Pittman?
- 3.
- 4.
- 5.

Robert W Sprague Jr
MEMBER'S PRINTED NAME

Robert W Sprague Jr
MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT CXIII

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt X

1. Did you ever hear of a guard at Whitehorse striking a prisoner?

2.

3.

4.

5.

CAPT D. R. CULLEN
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT

CXIV

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCpl (b)(6)

1. Do you understand that the "IRR" is part of the Marine Corps Reserve and if you are in the IRR you are still a LCpl in the U.S. Marine Corps?

2.

3.

4.

5.

Robert W Sprague Jr
MEMBER'S PRINTED NAME

Robert W Sprague Jr
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ

DC

APPELATE EXHIBIT CXIV

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCpl (b)(6)

1. ~~During the capture of (b)(6)~~ - ~~How~~ What language was used during the capture of (b)(6)
2. Did you ever ask (b)(6) if he understood or spoke English. If (b)(6) answered yes, to what level/proficiency did he say he spoke English?
3. Do you think (b)(6) was compliant during his capture because he was given instructions in Arabic?
- 4.
- 5.

Arthur Britto
MEMBER'S PRINTED NAME

Arthur Britto
MEMBER'S SIGNATURE

TC
DC
OBJ 39A NO OBJ

APPELATE EXHIBIT CYVI

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

SGT (b)(6)

1. WHO WAS WATCHING THE EFW'S WHEN EVERYONE ~~AT~~ WAS
ON ALERT; MAKING THE BURN?

2.

3.

4.

5.

LTCOL DAVIS

MEMBER'S PRINTED NAME

Paul E. Davis

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXVII (117)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

SGT (b)(6)

1. Are you aware of some Marine guards working in 2/25 using strikes, blows, and/or kicks on detainees to make them comply with orders, move, get up, or stay awake?

2. How do you know about this? How many Marines or shifts were involved? Did you ever see any Marines strike any detainees? Which Marines? Which detainees?

3. Have you heard of the 50/10 technique? Explain.

4.

5.

Robert W. Sprague Jr
MEMBER'S PRINTED NAME

R. W. Sprague Jr
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXVIII (118)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

1st Sgt (b)(6)

1. On 4 Jun did you ask that a Corpsman
look at (b)(6) also 5 Jun.

2.

3.

4.

5.

Col J. J. Coghlan
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXIX (119)
1-1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

SSgt (b)(6)

1. How was (b)(6) offloaded from the vehicle at Camp Whitehorse?

2. Who offloaded him?

3.

4.

5.

CAPT D.R. CULING
MEMBER'S PRINTED NAME

Douglas Williams
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXX (120)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

SSgt (b)(6)

1. was (b)(6) Weezing on ~~Bae~~ having trouble breathing while in your charge.

2.

3.

4.

5.

Col J. J. Cochran
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
 X
DC X

APPELATE EXHIBIT CXXI (12)
1-1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCPL (b)(6)

1. WHILE DRAGGING (b)(6) FROM THE CONCRETE SIDEWALK
TO THE DIRT AREA, DID (b)(6) BODY WEIGHT
LAND FORCEFULLY WHILE NEGOTIATING THE DROP?

2.

3.

4.

5.

CAPT THOMAS
MEMBER'S PRINTED NAME


MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXXII (122)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

CPL (b)(6)

1. WAS (b)(6) RETURNED TO HIS CELL?

2.

3.

4.

5.

LTCOL DAVIS

MEMBER'S PRINTED NAME

[Signature]

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXXIII (123)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCPL (b)(6)

1. ~~DID YOU SEE ANY COPIESMEN ASSIST~~ (b)(6)
~~DURING YOUR STAY ON THE 5TH?~~
2. WAS WHERE WERE YOU DURING THE ALERT
THAT WAS CALLED ON THE 5TH?
- 3.
- 4.
- 5.

LTCOL DAVIS
MEMBER'S PRINTED NAME

Paul E. Davis
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXXIV

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

L Cpl (b)(6)

1. During the incident or time period during or immediately after (b)(6) fell into the concertina wire, were Sgt Pittman or L Cpl (b)(6) there? Did either of those Marines strike, or knee Mr. (b)(6) If not, what did they do/what was their involvement?

3.

4.

5.

Robert W Sprague Jr.
MEMBER'S PRINTED NAME

Robert W Sprague Jr.
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXXV

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCpl (b)(6)

1. Did you witness LCpl (b)(6) drag (b)(6) around the cell and out towards the recreation pen?
2. ^{OK} In what manner was (b)(6) being dragged?
3. Were you aware of the significance of (b)(6) as a detainee?
- 4.
- 5.

CAPT D.R. COLLINS
MEMBER'S PRINTED NAME

Douglas Collins
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT CXXVI

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Lt Pl (b)(6)

1. Did you observe (b)(6) grab any Marines during his in processing?
If yes How did the ^{Marines} respond to (b)(6) actions?

2.

3.

4.

5.

Arthur Britton
MEMBER'S PRINTED NAME

Arthur Britton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT Cxxvii

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCpl (b)(6)

1. when cleaned up did you see any Bruised on Chest, Stomach and back area of (b)(6) while alive. TO clean up (b)(6)
2. During The movement outside were there OFFICERS directing you.
- 3.
- 4.
- 5.

Col J. S. Cochran
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
DC ~~X~~

APPELATE EXHIBIT CLXVIII

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCpl (b)(6)

1. If you were on duty during (b)(6) in processing, who was doing the strip search and in processing? Where was (b)(6) during the strip search?
2. Do you know SSGT (b)(6)? Did he ever provide any guidance on how to get ~~detainees~~ detainees to stand up or stay up between their inprocessing and questioning by HET?
3. Are you aware of any SOP, general practice, discussions, or anything of the sort regarding using physical contact or strikes to keep detainees up?
- 4.
- 5.

Robert W Sprague
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT CXXIX

**UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT**

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps Reserve

**DEFENSE REQUEST FOR JURY
INSTRUCTION REGARDING
ACCOMPLICE TESTIMONY**

[For Private First Class (b)(6)]

30 August 2004

1. Pursuant to Military Judges' Bench Book Instruction 7-10, U.S. v. Gittens, 39 M.J. 328, (C.M.A. 1994), U.S. v. Gillette, 35 M.J. 468 (C.M.A. 1992); and U.S. v. McKinnie, 38 M.J. 141 (C.M.A. 1991), the defense respectfully requests that the court provide the members with the following instruction on the law regarding accomplice testimony.

2. The defense requests the following instruction:

A witness is an accomplice if he was criminally involved in an offense with which the accused is charged. The purpose of this advice is to call to your attention a factor specifically affecting the witness' believability, that is, a motive to falsify his testimony in whole or in part, because of an obvious self-interest under the circumstances. For example, an accomplice may be motivated to falsify testimony in whole or in part because of his own self-interest in receiving immunity from further prosecution and non-judicial punishment.

The testimony of an accomplice, even though it may be apparently credible, is of questionable integrity and should be considered by you with great caution. In deciding the believability of Private First Class (b)(6) you should consider all the relevant evidence including but not limited to the fact that Private First Class (b)(6) has received testimonial immunity, the fact that he is testifying pursuant to a pretrial agreement. Pursuant to that pretrial agreement, and in return for his testimony, Private First Class (b)(6) charges were withdrawn from being investigated at an Article 32 pretrial hearing; he was allowed to plead not guilty to seven specifications; and was only required to plead guilty to one dereliction of duty specification at battalion non-judicial punishment.

APPELLATE EXHIBIT

CXXX (130)

PAGE 1 OF 2

Whether Private First Class (b)(6) who testified as a government witness in this case, was an accomplice is a question for you to decide. If Private First Class (b)(6) shared the criminal intent or purpose of the accused, if any, or aided, encouraged, or in any other way criminally associated or involved himself with the offense with which the accused is charged, he would be an accomplice whose testimony must be considered with great caution. Additionally, Sergeant Pittman cannot be convicted on the uncorroborated testimony of a purported accomplice if that testimony is self-contradictory, uncertain, or improbable.

In deciding whether the testimony of Private First Class (b)(6) is self-contradictory, uncertain, or improbable, you must consider his testimony in the light of all the instructions concerning the factors bearing on a witness' credibility. In deciding whether or not the testimony of Private First Class (b)(6) has been corroborated, you must examine all the evidence in this case and determine if there is independent evidence that tends to support the testimony of this witness. If there is such independent evidence, then the testimony of this witness is corroborated; if not, then there is no corroboration.

You are instructed as a matter of law that the testimony of Private First Class (b)(6) is uncorroborated.

3. Respectfully Submitted


J. TRANBERG


W. A. FOLK

UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps Reserve

DEFENSE REQUEST FOR JURY
INSTRUCTION REGARDING PRIOR
INCONSISTENT STATEMENT

30 August 2004

1. Pursuant to Military Judges' Bench Book Instruction 7-11-1, , the defense respectfully requests that the court provide the members with the following instruction on the law regarding a prior inconsistent statement.

2. The defense requests the following instruction:

You have heard evidence that Private First Class (b)(6) made a statement prior to trial that is inconsistent with his testimony at this trial, specifically, that Private First Class (b)(6) sworn statement to NCIS from July 2003 regarding his knowledge of EPWs and Mr. (b)(6) at Camp Whitehorse. did not mention that Sergeant Pittman assaulted Mr. (b)(6) or the (b)(6) , but his testimony at trial indicated that Sergeant Pittman assaulted both of these individuals. If you believe that an inconsistent statement was made, you may consider the inconsistency in evaluating the believability of the testimony of Private First Class (b)(6)

3. Respectfully submitted,


J. TRANBERG


W. A. FOLK

CROSS-EXAMINATION

Questions by defense counsel (1stLt Folk):

Q Staff Sergeant (b)(6) I want to direct your attention back to 1300 this afternoon when you were talking about that initial period of class given at Camp Lejeune.

A Yes, sir.

Q You said that there was one period of instruction given by the Major regarding all these issues that pertained to the Geneva Convention and EPWs. Right?

A Yes, sir, the laws of war.

Q And that was given to the entire H&S Company?

A Yes, sir.

Q Okay. You don't know if Sergeant Pittman was there or not. Right?

A No, I don't recall him. At the moment that I was being taken to class, I don't remember him being there exactly.

Q Now, Sergeant Pittman's an 0311 by trade. Right?

A Yes, sir.

Q That means he's a Marine infantryman. Correct?

A Yes, sir.

Q And he was also cross trained as an 0331, which is a heavy machine gunner. Right?

A Yes, sir.

Q And it was pretty common for Sergeant Pittman to spin up the rest of the H&S Company Marines on how to use some of these weapon systems, most of them?

A Yes, sir.

Q And a lot of that training he performed for the H&S Company was done while you guys were at Camp Lejeune still. Correct?

A Absolutely, sir. That is where we took the time to do all the training the best we could before we deployed.

Q And he was one of the primary instructors in that field of training of machinegun employment. Right?
A Yes, sir.

Q So it wouldn't be surprising to you if he would have missed that class on the laws of war and everything because he was training other Marines on how to employ machine gun systems?
A No, sir, it wouldn't surprise me at all.

Q Now, let me direct your attention to the portion in time when you first arrived at this EPW camp. You said you were relieving Staff Sergeant (b)(6)
A (b)(6) yes, sir.

Q So for a period of time there were actually two Staff NCO's present?
A Yes, sir.

Q But prior to you arriving, the only Staff NCO on the scene was Staff Sergeant (b)(6)
A That is correct, sir.

Q And following your relieving of him, you were the only Staff NCO on the scene. Correct?
A Yes, sir.

Q And under you there were three other sergeants, right?
A Yes, sir.

Q Sergeant Pittman, Sergeant (b)(6) and Sergeant (b)(6)
A That's correct, sir.

Q And then there were a handful of other NCOs below the rank of sergeant?
A Yes, sir.

Q Corporals?
A Yes, sir.

Q But you were the sole staff noncommissioned officer at Camp Whitehorse. Right?
A Not at Camp Whitehorse, sir. At the --

Q At the detention facility?
A -- at the EPW facility, yes, sir.

Q Okay. And so if one of the sergeants had an issue that they needed to raise to the next level higher, that would be to you. Right?

A Yes, sir.

Q And then you would take it to the Major?

A Yes, sir.

Q Whether it was Major Paulus or Major (b)(6)

A That is correct, sir.

Q All right. Let's talk for a minute about the whole introduction phase of the exercises when prisoners would be brought to the detention facility. You said that security was the primary concern. Right?

A Yes, sir.

Q Security of the Marines and the detainees, basically whoever was there at the time?

A Safety, yes, sir.

Q The safety involved having weapons on the scene. Right?

A Yes, sir.

Q Okay. Making sure that the detainees -- the newly arrived detainees didn't do anything that could possibly put those Marines lives in any kind of harm. Right?

A Yes, sir.

~~Q And one of the things that was really important in ensuring this level of safety for everybody, this security, was to move at a rapid pace. Right?~~

A Right, sir.

Q It was important to move like a Marine. Correct?

A Yes, sir.

Q And that need for speed, sort of speak, or that need to move quickly would apply to all stages of the indoctrination or -- I'm sorry. The introduction of detainees. Right?

A Yes, sir.

Q You would be noting things in your logbook in a military manner. Right?

A Yes, sir.

Q And the guards would be off loading the prisoners from the HMMWVs in a military manner. Right?

A Yes, sir.

Q Might not always be the most polite manner of off loading. Right?

A No, sir.

Q It was all about speed. Right?

A Yes, sir.

Q Get it done?

A Yes, sir.

Q Okay. And you wanted to get those line Marines that were delivering the detainees in and out as quickly as possible, too. Right?

A Yes, sir.

Q And this was also part of the security concern. Correct?

A Yes, sir.

Q And that was something that all the Marines that would be present during the off loading of detainees would be aware of, right? To move fast?

A Yes, sir.

Q So it wouldn't surprise you as a Staff NCO at the ~~detention facility to know that your Marines were~~ executing their responsibilities during that indoctrination and off-loading phase in a timely manner. Would it?

A No, sir.

Q In fact, you would expect that from your Marines. Wouldn't you?

A Yes, sir.

Q And you would want to know they are moving fast. Right?

A Yes, sir.

Q All right. Now, you said you never saw anything while you were at camp at the detention facility that you believe constituted excessive force by any of the guards working under you. Right?

A Right, sir.

Q And that includes Sergeant Pittman. Right?
A Yes, sir.

Q Now, Sergeant Pittman was pulled into that detention facility because of his background working as a federal bureau prison guard. Right?
A Yes, sir.

Q And you had a chance to see Sergeant Pittman executing all the responsibilities at the detention facility. Right?
A Yes, sir.

Q And he was a pretty professional guard there. Right?
A Very professional, sir.

Q Very proficient in the sense that he knew how to quickly search and move on these prisoners from point A to point B?
A Yes, sir. Proficient and professional.

Q And he was somebody that would only use the amount of force that was required by the circumstances, wasn't he?
A That is correct, sir.

Q You never saw him lash out at you or do anything that you believe is excessive. Right?
A No, sir.

Q And, in fact, he was so good at what he did that you actually used him to help train other Marines in how to about doing these searches. Right?
A Yes, sir. I also distributed the responsibilities to others. Yes, sir.

Q And some of these searches involved doing thing that Marines might not normally be trained to do, like having prisoners lift their genitalia up so you could inspect that area for weapons and contraband. Right?
A Yes, sir.

Q And Sergeant Pittman had a spearhead how to teach Marines to do that kind of thing. Right?
A Yes, sir.

Q Now, going back to this whole concept of excessive force. Using your definition, you said you never saw anything from your guards that would constitute excessive force. Right?

A Right, sir.

Q Would, in our opinion, would senior guard punch a detainee in the stomach until he fell to his knees constitute excessive force?

A That would be excessive force.

Q So if you had seen that, you would have put a stop to it?

A Yes, sir.

Q You never saw that when (b)(6) and (b)(6) got in processed?

A No, sir.

Q You think you would have seen that despite the obstructed view that you had of the in processing?

A Since I had a view of the guards interacting with (b)(6) not per se of (b)(6) yeah, I probably would have seen it. I would be in a position in a way that I would be able to see a punch or something like that, yes, sir.

Q But you never saw anything?

A No, sir. Except for what I described earlier with Sergeant (b)(6) slapping down Lance Corporal (b)(6) I'm sorry. Sergeant (b)(6) slapping down (b)(6) hand when he tried to reach for Lance Corporal (b)(6)

Q Now, you talked about some of the Marines that were present during this in processing, and you mentioned Major Paulus, Lance Corporal (b)(6) maybe Sergeant (b)(6) maybe a different interpreter. Right?

A Yes, sir.

Q Is it fair to say you don't remember exactly who was there?

A As far as the interpreter?

Q No, just in general.

A When (b)(6) was being processed?

Q And the (b)(6)

A I have a pretty good idea of who was there.

Q Do you remember exactly what Sergeant Pittman was doing during that process?

A What was he doing?

Q Yes. What his role was during the in processing?

A No, I know he was there, but --

Q You don't really know what he was doing?

A -- exactly what he was doing. I remember specifically Lance Corporal (b)(6) and Sergeant (b)(6) doing the indoc -- I'm sorry. The search.

Q That Lance Corporal (b)(6) was responsible for (b)(6)

A Yes, sir.

Q But you don't remember really what Sergeant Pittman was doing?

A No.

Q Just your memory that you believe he was there?

A Yes, sir.

Q It was pretty normal for him to be in that area because of his training in this whole process of searching and seizure?

A Sergeant Pittman, being the responsible NCO that he is, he would generally be there every time we would receive a new prisoner to make sure that, you know, things would be done accordingly.

Q Even if he wasn't actually actively participating?

A Correct.

Q So Sergeant Pittman was there, it doesn't necessarily mean he was doing anything hands on. He could have just been there as responsible?

A Or he might have taken a turn searching one of the (b)(6) (b)(6)

Q But you don't really remember exactly what he was doing?

A Right, sir.

[END OF PAGE]

Q I want to draw your attention to -- Captain Studenka covered in pretty good detail, but there is a couple of things I just want to clear up for myself. You said you observed this incident where Lance Corporal (b)(6) had some contact with (b)(6) for about six to seven seconds where he where you saw him being pulled. Right?

A Yes, sir.

Q And at this point and time when you saw (b)(6) being pulled, he wasn't wearing any clothing. Right?

A Correct.

Q He was, for lack of a better term, totally naked?

A Yes, sir.

Q And he was being pulled. You got down on the floor and kind of demonstrated what was going on, and you kind of showed that he was moving his feet to kind of assist in the pulling?

A Yes, sir.

Q He was being pulled over kind of a hard gravel surface. Right. Kind of a rocky, sandy, loose rock, loose gravel kind of surface -- it was outdoors. Right?

A No, sir. This was indoors.

Q What was on the ground?

A The ground was cement ground, but there is, as you say, some loose pebbles on the ground.

Q All right. So we're talking about a hard cement floor with some assorted loose debris?

A Yes, sir.

Q That people might --

A Uneven surface.

Q Okay. And he was dragged across this floor naked. Right?

A Yes, sir.

Q And he was, basically, his buttocks would have been in contact with this rough surface the entire time, and his back?

A Yes, yes, sir.

Q So his buttocks would have been in contact. Right?

A Yes, sir.

Q Back would have been in contact with it?
A Yes, sir.

Q Okay. How about triceps. Those would have maybe been in contact with it a little bit?
A Possibly, sir.

Q And you indicated in your demonstration was that the portion of his body that maybe didn't come into contact so much with this rough abrasive surface would have been the tops of the back of his shoulders. Right?
A Right, sir.

Q And his head, obviously, wouldn't have come into contact with it either. Right?
A Because his head wasn't touching the ground.

Q Right. Because that was being supported in some manner by Lance Corporal (b)(6) [REDACTED]
A Yes, sir.

Q Okay. And you said when you begin to observe this process of him being assisted across this rough floor, it had already been going on for some period of time. Right?
A Yes, sir.

Q Your observation was in --
A Right. I'm unsure if that was the starting point or if it was an ongoing process.

Q Were you able to observe how long the streak of human filth, the defecation was from -- prior to where you saw him being dragged?
A To be honest, with you, sir, my attention was focused on observing where I came in, the point where he was, like, you know, actually being dragged.

Q Okay. So you weren't able to really observe any kind of trail of poop, for lack of a better word. You just observed this portion that started when you entered the room. Right?
A Yes, sir. Just the trail of pieces that was being left back from the --

Q So you didn't see how long that trail had been going on. Right?
A Right, sir.

Q Okay. Now, this affliction that you went into great detail with Captain Studenka in terms of having this bowel problem. This wasn't something that was just limited to prisoners. Right?

A That is correct, sir.

Q Marines were suffering from it, too, to some degree. Right?

A Oh, yes, sir.

Q And you guys actually called it the ebee-geebies. Right?

A Yes, sir. Some strange, you know.

Q Some unexplainable affliction that would make you sick?

A Very sick, yes, sir.

Q And it wasn't uncommon for your Marines to get that. Right?

A Right, sir.

Q Okay. That would limit their mobility to some degree and limit their ability to execute their duties if they had a bad case of it?

A Yes, sir. Because you become dehydrated right away and you would have to be, like, pretty much confined to sick quarters, laying down at BAS or whatnot to get fluids.

Q Now, if one of your Marines was suffering from that, ~~that is something they take to the Corpsman first,~~ right, not necessarily to you? That would be something more appropriate for like Doc (b)(6) or Doc (b)(6).

A They'll let me know though, "Hey, Staff Sergeant, I don't feel good" or whatnot and then I would make sure that they go to the Corpsman.

Q I want to draw your attention to one of the inmates that you guys in the detention facility specifically had. Do you remember an inmate whose nickname was (b)(6)?

A Yes, I do, sir.

Q And that kind of -- well, that nickname came from the way he looked, right? From his appearance?

A Just like every other nickname from prisoners, yes, sir.

Q Right. And he kind of resembled a rapper who was known as (b)(6). Correct?

A Because of his size and height and weight, yes, sir.

Q Okay. And you had a chance -- you know who I'm talking about, right, when I say (b)(6)
A I believe his name was (b)(6) real name, one of his names.

Q You got my next question. He left the detention facility while you were still stationed there. Right?
A Yes, sir.

Q And he left the detention facility because whatever information that HET needed had been drawn and it was time for him to go. Correct?
A Yes, sir.

Q Okay. And when he left, he actually later came back to the facility. Didn't he?
A Yes, sir.

Q And he came back because he basically was so happy about how he was treated that he kind of wanted to return the favor to the Americans, right? To the Marines?
A He was grateful in the way that we treated him and the respect that we gave him. So he, obviously, his only gripe was why is he there, why is he there, when am I going home? But through the duration that he was there, he was treated, you know, fairly and treated well. So when he left, he felt very grateful to us and came back a few days later with a -- with lots of food.

Q Food that his family had cooked. Right?
A Yes, sir.

Q And he was bringing this back as a gift to the Marines. Right?
A Yes, sir.

Q And you guys -- the Marines didn't actually eat the food because of concerns maybe about bacteria?
A Yes, sir.

Q But the Marines actually took this food that (b)(6) was giving you as a gift, and you provided it to your detainees. Right?
A That was a day of feast for our detainees, yes, sir.

Q And they really liked that, didn't they?
A Yes, sir.

Q And you are aware also that (b)(6) actually was so grateful towards Sergeant Pittman that he invited Sergeant Pittman over to his house for dinner on an occasion. Right?

A Yes, he did, sir. He did that to several of us.

Q And again, this was out of gratitude for the way he was treated by the Marines. Right?

A Yes, sir.

Q And you had an opportunity to observe the detainees eating this food that was provided by (b)(6) and then by you to the detainees?

A Yes, sir.

Q And you said their reaction was one of joy?

A Yes, sir.

Q Now, to revisit this turnover another time. You remember your testimony to Captain Studenka regarding the orders to go and make statements to NCIS?

A Yes, sir.

Q Were those same orders also given to Sergeant Pittman that were given to Lance Corporal (b)(6)?

A Yes, sir.

Q Okay. Were those the same orders that everybody received? No difference from one Marine to the other?

A That is correct, sir.

DC (Lieutenant Folk): Staff Sergeant, I don't have any other questions. Thank you.

WIT: You're welcome, sir.

IO: Here's what we're going to do. I'm going to ask a couple of questions and I'm going to ask these questions to give counsel an opportunity to address these issues this evening, either in supplementing your written brief regarding the Article 31 rights, or for government counsel to offer whatever they would like to offer. And then we're going to break for the evening. And tomorrow we'll resume with any redirect that the government counsel will have and any recross that the defense may have. And this will give Lieutenant Folk an opportunity to interview Lance Corporal (b)(6) this evening and then do whatever he needs to do.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the Investigating officer:

- Q Staff Sergeant (b)(6) whenever Major Paulus instructed you to get written statements or get statements from your guards, you had testified that you went to the guards and for some of them weren't on shifts at the time, you gathered them up as a group and instructed them to provide written statements. Is that correct?
- A Yes, sir.
- Q And then for those who may have been on a particular shift at that time, you went individually and told them that they were to provide a written statement?
- A Yes, sir.
- Q And as I understand your testimony, at no time did you advise anyone, either when you had them in masses, or groups, individually, of their Article 31 rights. You know, the right to remain silent, the right to have an attorney, et cetera, et cetera. Is that correct?
- A That is correct, sir.
- Q At the time that you instructed these Marines to provide written statements, did you personally suspect that they had committed any crime at that point?
- A Negative, sir.
- Q Did Major Paulus indicate to you that he suspected that there was a crime that had been committed, or an offense committed by any of the guards, and that is the reason why you wanted these statements?
- A Negative, sir.
- Q When you advised these Marines, or I should say instructed, or worded these Marines to provide these written statements, were you expecting to receive any incriminating responses that would have led you to believe after what you read that these Marines or someone had indeed committed a crime?
- A No, sir.
- Q Did you reasonably expect that such a statement may be provided if a statement was given to you by one of your Marines, a statement that was incriminating. Did you

reasonably expect someone to give you an incriminating statement?

A I really had no expectations on it, sir, But that was a possibility that somebody would write that on their statement, yes, sir.

Q But at the time I'm asking, did you reasonably expect that that was going to occur?

A To be honest, with you, sir, I didn't expect anybody to write a statement and say, I did this that caused death, no, sir.

(b)(6)

IO: All right I have no other questions of Staff Sergeant (b)(6) But that kind of gives you an idea of where I'm going with this and what probably should address with respect to the commission of any of these statements that were produced as a result of being ordered to produce them.

CC (Mr. Zimmermann): Do you want us to address that issue now?

IO: No. I want to give the trial counsel an opportunity to do whatever research they are going to do, something they probably should have anticipated before this moment. But to the extent that they can -- we're not done questioning this Marine.

CC (Mr. Zimmermann): No, but normally when an IO or a judge asks questions, you can follow up right away and not the next day. I'm not talking about cross-examination -- I mean redirect and recross about other things, but just about those questions you just asked. Wouldn't it make more sense for us to follow that up right now?

IO: Well, go ahead. I don't want to delay at this point. I want the trial counsel to do some research on this and you can follow it up all you want tomorrow.

CC (Mr. Zimmermann): I think the factual things will help on the research.

IO: Go ahead. I'm giving you the opportunity.

CROSS-EXAMINATION

Questions by civilian counsel (Mr. Zimmermann):

Q Staff Sergeant (b)(6) those orders that were given to you by Major Paulus that you passed on to the Marines, you knew that that came because the 1st Marine Division had ordered an investigation into his death. That is what generated the orders. Correct? You didn't think that Major Paulus just made this up on his own, did you?

A No, absolutely. I didn't think he made it up on his own, that it was coming from higher up. But I didn't know at that point and time which higher up, was an investigation was going to happen or whatnot.

Q Okay.

A Somebody wanted statements because it's the right thing to do whenever there's an incident, especially of this magnitude.

Q Okay. You didn't know who ordered the investigation, but you figured there had to be an investigation if those statements would go to. Right?

A Yes, sir.

CC (Mr. Zimmermann): I mean, why would you write statements if ~~there wasn't an investigation going on?~~

IO: Are you referring to a criminal investigation or an investigation just to determine why someone was now lying dead?

Questions by civilian counsel (Mr. Zimmermann):

Q All right. Let's address that, what the investigating officer just said. You weren't asked to participate in some medical investigation to determine what his cause of death was. Right?

A Right.

Q So you knew it wasn't a medical investigation. Correct?

A Yes, sir.

Q How long have you been in the Marine Corps?

A Fifteen years, sir.

Q When there is an incident like that, whether it's a death of one of your Marines, say somebody runs over somebody on a training exercise, or there is a helicopter crash or whatever it is, there is usually an investigation when death results. You knew that. Correct?

A Yes, sir.

Q And everybody that participates in that with 15 years in the Marine Corps knows that there is always a possibility that somebody did something wrong that would get 'em charged with some kind of crime. Right?

A Right, sir. Eventually from there, that is what would probably happen, yes, sir.

Q Right. And I think what the investigating officer was trying to get at, did you think that this was just some local investigation just to document what happened, or was this part of an investigation ordered by higher headquarters. Which one was it?

A At that moment, sir, what all of us were thinking was we did nothing wrong. We're going to provide statements as ordered and, obviously, assume later on that all these statements were going to be gathered because there was going to be an investigation launched. But we didn't know to what degree the investigation was going to be carried on to what levels.

Q Okay. And you didn't know why or how (b)(6) had died, did you, personally?

A No, sir, I did not know why.

Q And you didn't know why precisely what anybody was going to say they did when they gave these statements to you, did you?

A Absolutely, sir. Nobody was coached to write anything or, like, told write these because of this and that, no.

Q And when you direct -- you told those Marines that they had to write the statement. Correct?

A Yes, sir.

Q And that statement you then forwarded it up?

A Yes, sir. To be done in a very expedient manner, quickly.

Q Why? Why did they have to be done right away?
A I guess to preserve the memories of the Marines that were involved or of, you know, of the incident.

Q But didn't someone want them up at the higher headquarters right away?
A Yes, sir.

Q Did you not anticipate as a Staff NCO that if somebody did something wrong they could perhaps be charged, for example, with dereliction of duty or some kind of negligence or something of that nature?
A Yes, sir, absolutely. But at that point, I'm not thinking, okay, this is going to wind up nine months later in California at a trial.

Q Well, of course not.
A I knew an investigation was going to be conducted. To what level, no, sir, I did not know why.

Q Well, you know, when we begin an investigation, no one ever knows how it's going to end up, do we?
A Right, sir.

Q Any criminal investigation, we never know how it's going to end up. Correct?
A That's correct.

Q Even this investigation right now, we don't know how this is going to end up, do we?
A Yes, sir.

Q Even the investigating officer doesn't know how this is going to end up at this point?
A Right, sir.

Q But it's a criminal investigation, isn't it?
A Right, sir. But at that point it was not a criminal investigation, or we were not advised that it was a criminal investigation because none of us thought nobody did anything wrong, that is why.

Q Because when you answered that question of the investigating officer that you didn't know there was a criminal investigation or not, is because you didn't think that -- you had no knowledge of any crime being committed?
A That is correct, sir.

Q But that didn't change the fact that there was an investigation ordered by higher, you didn't know whether it came from division or not?

A No, I did not know.

Q But it came from some higher headquarters?

A Yes, sir.

Q So that is what you meant when you said you didn't know it was a criminal investigation because you didn't personally didn't think anybody had done anything wrong?

A That is correct, sir.

Q But you didn't know what the people upstairs would look at those statement and charging somebody with something?

A At that point, I assumed it was going to be an investigation, but of what nature, I don't know.

Q You didn't know?

A Right, sir.

IO: Captain Francis, would you like to -- I'm sorry, Captain McCall.

CROSS-EXAMINATION

Questions by the government:

Q Who told you to take the statements?

A ~~Major Paulus, sir.~~

Q All right. Now, when you had this conversation with Major Paulus?

A Mm-hmm.

Q What specifically did he tell you?

A That I needed to have my Marines and myself write a statement on anything that relates to (b)(6) from the moment he arrived until we found him.

Q Now, did Major Paulus at that moment tell you that he suspected anybody of committing a crime, either murder or assault or dereliction of duty?

A Negative, sir.

Q Now, did Major Paulus tell you that this investigation had been ordered by the Naval Criminal Investigative Service -- I'm sorry. Let me ask this question again. Did Major Paulus tell you that these statements had been ordered to be taken by the Naval Criminal Investigative Service?

A Yes, sir.

Q So he did tell you that?

A But it wasn't like a -- how should I say it? It wasn't established, per se, who needs a statement. Somebody needs a statement, we have to write them. And obviously, whatever the investigative personnel that is going to be involved in the investigation would want them, NCIS or whoever it is.

Q Yeah. But my question is, I'm trying to be specific because it's important. Did he say, if at all, who wanted the statements besides himself at that moment? Did you know?

A I don't recall specifically if he mentioned NCIS, but I mean --

Q I'm not asking what you think. I'm asking you what he told you?

A What I remember specifically is Major Paulus telling me, "Staff Sergeant (b)(6) collect statements from yourself and all the Marines as soon as possible and hand them to me." That's it.

Q Now, when you went and talk with the Marines, did you suspect them of assaulting (b)(6) in any way?

A No, sir.

Q Did you suspect them of having a role in his or -- excuse me. Did you suspect them of murdering (b)(6)?

A No, sir.

Q Did you suspect them of mistreating him in any way while he was a detainee at the facility?

A No, sir.

Q The nature of the investigation, did you know whether it was going to be just a look into how he died or a criminal investigation?

A Just a look on how he died because it could have been natural causes.

Q That is what you thought he had died of at that time. Correct?

A Yes, sir. And I did not suspect my Marines of anything wrong.

Q And that is the same with Major Paulus. That is what he thought at that time as well. Right?

A Yes, sir.

TC: I have no more questions, sir.

IO: That is where we're going to leave it right now. I think you know what the issues are here, both sides, and you can address them in your brief you are going to submit tomorrow. We'll take up any further questioning of this witness tomorrow morning with Captain McCall on redirect and recross. We'll get to the issue of the statements, if they are going to come in or not at that point. So we're going to stand in recess at this point. It's 1615.

We'll resume tomorrow at 0800. I'd ask everyone to be here at that time and ready to go. Lieutenant Folk, you'll have your opportunity this evening to talk with Lance Corporal (b)(6). His counsel is still in the courtroom, so that should be easy to accomplish. And I'm going to take with me this evening all the exhibits that have been admitted. I'm not taking any of the exhibits that have not been admitted. I'm going to read ~~them this evening. So if there is anything that we need~~ to address with respect to these exhibits tomorrow, we can do that as well.

Okay. We'll stand in recess until 0800 tomorrow.

The Article 32 investigation recessed at 1614, 26 January 2004.

The Article 32 investigation was called to order at 0758, 27 January 2004.

IO: This Article 32 will come to order. All parties who were present when the court recessed are once again present. The accused and counsel are also present.

Two things I would like to put on the record before we get started. First of all, I've read all the exhibits that were provided to me and that were admitted, with the exception of IO exhibit Number 1, which is the Geneva Convention that is relative to the treatment of prisoners of war. I didn't read that entire document. I read selected portions of it that I considered to be pertinent. For example, Articles 3, 13 and 17. I didn't also read any of the exhibits, 29 through 34, relative to the pathology reports, toxicology reports et cetera, because they were only conditionally admitted subject to the witness actually testifying. So I have not reviewed any of those exhibits either.

And then also I would also like to put on the record something I failed to mention yesterday when I was asked to recuse myself. As justification for denying that motion and supporting the compartmentalization or segregation of the (b)(6) case from this case in terms of the evidence that was submitted there. I would also like to note for the record that when viewing the charges, and I understand that the charges can't be amended slightly or maybe even materially.

The overwhelming majority of the charges lodged against the three accused here state offenses that occurred on or about the 3, 4th or fifth th June, the overwhelming majority, not all of them. For example, all the charges that are presently lodged against Lance Corporal (b)(6) allege offenses that occurred on or about the 5th of June 2003. With respect to Sergeant Pittman, all of the charges allege offenses that occurred on or about the 3d or 4th of June, with the exception of two. There is the dereliction of duty that spans a period of time from 1 April to 30 June, and then there is a series of assaults that span that same period. And with respect to Major Paulus, all of the offenses, with the exception of one, occurred on or about the 5th and 6th of June 2003, with the exception of one dereliction of duty charge that spans a period of time of 15 May to 30 June at least as alleged on paper at this point.

The evidence that came in for the (b)(6) Article 32, gentlemen, essentially ended, in terms of time, ended when he left as the OIC, which was on or about the end of May or very beginning of June, and certainly, they didn't carry over into the time period when (b)(6) arrived at the camp. So in that regard the overall majority of these offenses pick up where the (b)(6) case, investigation left off.

Now, you may have noticed that the (b)(6) charge sheet goes from April to the end of June. However, the evidence clearly showed that he left as OIC either at the very end of May or the very first day or so of June. And as I said, there is no evidence that was introduced that covered the period up to and including when (b)(6) and the (b)(6) arrived at the camp. And so for that reason, as well as the others, I stated yesterday, I feel that we're almost dealing with you, you know, although one investigation in my view, separate periods of time with distinct set of circumstances being, I think, addressed at this hearing that weren't addressed at the other hearing at all. Other than the dereliction of duty charges against Major Paulus and Sergeant Pittman and one charge -- or one specification of assaults that stands a period of time, the other offenses cover a discreet period of time that was not covered at all during the (b)(6) Article 32.

Having said that, I still maintain my earlier ruling that I can segregate, compartmentalize the evidence in this hearing and not consider any evidence of the other hearing. But at the same time, and I will repeat that, if there was something that I heard at that other hearing that I think has any bearing on this hearing, I will advise all the parties and we will address it at that time. So far I have heard nothing out of Staff Sergeant (b)(6) mouth that leads me to believe that anything occurred at the other hearing is relevant to this hearing, at least not yet. We will revisit that issue when it presents itself

CC (Mr. Higgins): Sir, with that, from my record, my concern when I made the challenge is that both Major (b)(6) and Major Paulus have a dereliction of duty, what I'm going to call the general dereliction of duty charge that they face that as the OIC, as I understand it on its allegation, as the OIC, they failed to take care of the prisoners underneath them.

My concern between the two hearings is, if Major (b)(6) has set up policies, procedures or lack thereof that they came how we treat the prisoners. Okay. If he set those up and you find dereliction based on those, if Major Paulus comes in and just continues through with the same policy and procedures that he is actually given at his handover material, any evidence you've had on those, I don't want used against Major Paulus by continuing the same policies established by (b)(6). I do not even think that actually constitutes a crime, but you may. So that is my concern. If there is a break, and maybe you came to it at this point, but if you can say that anything (b)(6) put in place that Paulus continued, (b)(6) is responsible for and Paulus isn't. It's a fairly blanket statement. I think a lot of the concern I have would be alleviated on that particular issue. That is my issue with the carryover between the two.

IO: Well, let me respond to that almost in a knee jerk reaction without having given that a whole lot of thought. Quite frankly, my view is if a new OIC takes over or a new commanding officer takes over of a unit, if he continues with the policies of a predecessor, he does so at his peril if that predecessor's policies were wrong or illegal in any way. He's the OIC. He is the CO. He sets the policy, the tone. He decides how the camp or his unit is going to be run. If he wants to change things to make them better, then he should do that. If he thinks that the policies that he inherited from the past are right, and they are not, he does so at his peril. That is where I'm coming from.

Now, so far, I haven't heard any evidence that indicates that Major Paulus simply carried over, other than the comment in his own statement that was introduced that I read that, you know, this was a policy, the standing and sitting policy was sitting something that was previously adopted and employed, and he chose to keep it in place. And that was a statement, I'm paraphrasing, of course, but that was an IO exhibit --

TC: Ten.

IO: -- Number 10. You are right. IO Exhibit 10, that he had mentioned. That is the only thing I've heard so far that he has chosen on his own to follow through with. That was a carry over from the (b)(6) regime, if you will. Now -- so you know where I'm coming from.

CC (Mr. Higgins): Yes, sir. And I just -- and I know I raised the issue. Just want to make sure I preserving my record here. That is my concern. I wasn't here for (b)(6) on the policy procedures, neither was Major Paulus present for that. So we didn't have the ability to confront that. I know you heard that yesterday, you made your ruling on it, but I just want to make the record clear.

IO: Well, I'm sure it's no secret among any of the defense counsel here today how I felt about the (b)(6) 32. I mean, I stated it publicly in open session about the state of the evidence.

CC (Mr. Higgins): Yes, sir.

IO: But I'm starting fresh, too. So I'm not carrying over anything that I learned in the (b)(6) 32, nor am I carrying over any of my impressions that I've gained from the (b)(6) 32. This is a brand new ball game.

CC (Mr. Higgins): Yes, sir.

~~IO: All right.~~

Now, we left off with Staff Sergeant (b)(6) on the witness stand. We are at the point now where we can -- if there is going to be any redirect examination with Captain McCall -- Captain McCall, do you have any redirect of Staff Sergeant (b)(6)

TC: Very brief.

IO: All right.

And then let me ask the rest of you, or all of you, actually: Captain McCall, do you intend to reintroduce some of the written statements that were provided to Staff Sergeant (b)(6)? Are you going to attempt to introduce those? And if so, we probably ought to address the legal issue of whether they are admissible under -- if there is any Article 31 violation.

TC: I think, as I remembered yesterday, there are two issues. There was an authentication issue and a 31b issue.

IO: Right.

TC: And my understanding was that even though we're at an Article 32 hearing, I hadn't overcome your concerns with respect to authentication, that I will be waiting until the agent came in to testify that these are the handwritten statements that he picked up from the unit when he began his investigation.

IO: I think that is fairly accurate. I'm less concerned with the authentication issue because I think you going to be able to solve that riddle. I'm more concerned with the Article 31 issues.

CC (Mr. Zimmermann): My preference remains, if you are asking my preference, is that we do them together because I view them as linked, and it's argued that way -- legally -- that they are linked. And I'm afraid if you make the ruling without seeing the rest of it -- for example, right now, I know we have not made the record. We have not given you enough yet to cause you to refuse to admit them at this point because there is nothing from the agent, there is nothing from Major Paulus. We haven't had a chance to do anything yet. So I still think -- it's not the saving time to do that. In fact, I think it would take more time to do it now then argue it and ~~then do it later and argue it again when the NCIS~~ statement comes in.

IO: Well, I don't know if we're going to hear from Major Paulus. So obviously, the government counsel can't call him. But nevertheless, Major Paulus was the one who issue it had direction to the Marines who provided the order. He is the one who started the chain rolling. the ball rolling, that it was Staff Sergeant (b)(6) actually communicated the order.

[END OF PAGE]

CC (Mr. Zimmermann): You are absolutely right. Let me be clear about that.

The government has proffered Major Paulus's NCIS statement. Depending on what your ruling is on that, that may be able to make the record that we need for the handwritten statement, because it deals with -- that statement deals with that just, so you know. We have to write it and I don't want to go into details.

IO: No, I haven't seen it.

CC (Mr. Zimmermann): And you shouldn't have. But, sir, so you know, that is another reason why we would prefer to do it once the NCIS agent -- the case agent gets on because then it's a package and you can see how they all interfect with each other. Right now we're piece mailing it.

IO: All right. I can do it that, and that seems to make sense. You should make whatever record you need to make with Staff Sergeant (b)(6) while he is on the stand. That is a building block for ultimately admitting it.

CC (Mr. Higgins): Sir, by way of heads up so you are not operating in evacuate, the objection on that particular statement was that this is the issue of --

IO: This is IO exhibit 11.

CC (Mr. Higgins): -- IO Exhibit 11. My argument is that the cleansing warning and read the warning given for that statement, I don't know if that's been submitted as part of the statement. It says dereliction of duty. It does not mention anything about which a homicide, assault or anything much bigger charges. My argument is that that is an insufficient cleansing warning for a statement given regarding those charges.

IO: Okay. Thank you.

So you want to get (b)(6) back on the witness stand and resume your redirect and your recross?

REDIRECT EXAMINATION

Questions by the government:

Q Good morning, Staff Sergeant.

A Good morning, sir.

Q I want to focus your attention now on the Camp Whitehorse detention facility during the time frame that Major Paulus was the officer in charge. All right?

A Yes, sir.

Q Did any of the detainees, during that time period that Major Paulus was in charge of that facility, have to go see the battalion surgeon or a medical doctor for any reason?

A Just give me a minute to think, sir because.

Q Absolutely. Take your time.

A The time frame that he was there as the OIC is so short that I'm trying to relate to see -- because I know we had prisoners that we actually had to take to the hospital to see the battalion surgeon, but I forget what time frame it was. There might have been one prisoner that --

Q Can you explain what you believe happened with that prisoner that he was able to see or receive medical attention?

A Yes. This was a prisoner that apparently was having seizures or something to that effect. There were several times where we had to rush him to the hospital.

Q What hospital?

A Nasriyah Hospital, sir. And also the battalion surgeon, or the assistant battalion surgeon, I believe it was Commander (b)(6) had to examine him at the jail. He actually came down and examined him just to find out, you know, what his ailment was. Later on we found out based on the hospital's diagnose that there was absolutely nothing wrong with the guy.

Q Okay. Now, that being said, was there a procedure in place to, if you will, go get the medical doctor instead of just having one of the Corpsman come down and look at the prisoner during this time frame?

A Well, the procedure that was in place, sir, was more of

a chain of command, if you would, even with the Navy. If a prisoner would get sick, obviously, the first person that would come see the individual was the Corpsman that was on station right there at Camp Whitehorse, which was either Doc (b)(6) or Doc (b)(6). If it was something that they thought was beyond their scope of expertise, then we would contact the COC because that is where the battalion BAS was at the COC, and try to get one of the actual doctors to come down and see the prisoner. If that didn't work, if it was something that was an urgent matter, then we transport the prisoner under, you know, heavily guarded to the actual hospital in Nasriyah because at Tallil Air Force Base they stopped treating prisoners after a certain period of time because, you know, they didn't have the manpower or whatever reason it was.

Q That hospital in An Nasriyah, was it an American hospital or an Iraqi hospital?
A Iraqi hospital, sir.

Q Was it run by Iraqi doctors?
A Yes, sir.

Q Now, I want to talk again about the incident where you saw Lance Corporal (b)(6) dragging Mr. (b)(6). All right?
A Yes, sir.

Q Can you describe for me where the arms of Mr. (b)(6) were when Lance Corporal (b)(6) was dragging him?
A As I said yesterday, sir, six to seven seconds. It's quite a short period of time to, like, record all these movements that are happening, but I tend to believe his arms were like up on his chest up here.

Q Up here?
A Somewhere in his thorax area.

Q Were his hands up around the throat area of this person, of Mr. (b)(6) person?
A No, sir.

Q Did you hear Mr. (b)(6) cry out or complain in any way?
A Not really, sir.

Q What does not really mean?
A More like -- if he was making noises, they were more of a moaning type of sound, like when something hurts, like your stomach hurts or whatnot, like that type of sound, not like a choking sound.

Q So it was a moaning type sound that you are describing?
A Yes, sir.

Q Do you recall whether or not (b)(6) back was arched in any way?

A Arched, not just slightly bent because of the support that Lance Corporal (b)(6) was providing.

Q Where was the hand. if you can show me on your neck, of Lance Corporal (b)(6) that -- you said he had him front and back. Is that correct?

A Yes, sir.

Q Where was the hand on the neck of Lance Corporal (b)(6) -- I'm sorry. Where was Lance Corporal (b)(6) hand on (b)(6) neck?

CC (Mr. Zimmermann): Objection. That assumes facts not in evidence. He didn't testify his hands was on his neck.

IO: Why don't you just ask him where he had his hands.

Questions by the government:

Q Where was his hands on (b)(6)
A His hands and arm, sir, were pretty much in contact with the entire head area, if you would. Not specifically in the neck area, but somewhere where he could have support to be able to pull this individual.

Q Where was his hand on his head, or neck or whatever?
Where was it?

A Well, I really don't recall the exact spot where his hand was, but I remember his arms being around his neck area and the head area, this part right here.

IO: Let me interrupt. When we use pronouns, we're not necessarily sure who we were referring to, so (b)(6) arms and hands were around (b)(6)

WIT: Head area.

IO: Okay. His hands were around his neck, or his head, we don't know who "his" refers to when you are talking. So we need to use the names of the individuals as much as we can.

WIT: Check, sir.

IO: It keep it is record clear.

WIT: Roger that, sir.

IO: Thank you. So start over.

Questions by the government:

Q Where were Lance Corporal (b)(6) hands or arms in relation to the body of (b)(6)?
A Lance Corporal (b)(6) s arm and hands were at the points of (b)(6) head, sir.

Q Take his right hand. Where was Lance Corporal (b)(6) right hand in relation to the body of (b)(6)? Do you remember?
A No, sir. I do not remember the exact location of his hands at that point on (b)(6) head.

Q Were the hands of Lance Corporal (b)(6) touching (b)(6) face in any way? Do you remember?
A Not the face, sir. It was the head area, but I do not remember a particular spot where his hands were at any given time. Just the general area that his arms and hands were around (b)(6) head.

Q When you say Lance Corporal (b)(6) had his hands on the general head area of (b)(6), can you please point to me on your head what you are talking about? Where were the hands of Lance Corporal (b)(6) on the body of (b)(6)?
A General area means this part right here, the back and chin area, sir.

Q Let's take those one at a time for the record. Can you please point --

CC (Mr. Higgins): Can you put them on the record. What he just did. The witness indicated --

IO: That is what he is about to do, I believe.

CC (Mr. Higgins): Okay. I'm sorry. My apology.

Questions by the government:

Q The first motion you made was right here. Is that correct? Please put your hands back up.

A Side of the head, sir.

Q All right. For the record, the witness has taken his right and left hands and in a downward motion from the almost top of the skull down through his ears and chin area, made a movement with both hands.

A Back of the head, sir, for support.

Q With the right hand of the witness, he has indicated the back head of his skull.

A And the chin area, sir.

Q And with his right hand, the witness has indicated the chin area on his person.

A Again. I don't know which hand of Lance Corporal (b)(6) -- which hands were touching where on head at that point.

Q Do you recall how hot it was on that day at that time?

A Upper 90's, sir, low 100's.

Q Was it humid outside?

A Not really, sir. It's typically dry there all the time.

Q Was the sun out at that point?

A Yes, sir.

TC: Sir, I have no more questions. Thank you.

IO: All right. Recross by any counsel?

CC (Mr. Higgins): No, sir.

CC (Mr. Zimmermann): No, sir.

DC (1stLt Folk): No, sir.

IO: Is there a need for this witness to remain in the area, subject to recall?

CC (Mr. Zimmermann): Not for Lance Corporal (b)(6)

CC (Mr. Higgins): Not for Major Paulus.

DC (1stLt Folk): No, sir.

TC: Not from the government, sir.

IO: Okay.

Now, are all counsel satisfied that they got from this witness whatever they need to get from him relative to the admission of these written statements that the government has tried to get in or keep out?

Okay. Staff Sergeant (b)(6) you are excused from this hearing, and you are free to resume your duties. As you've heard, no counsel here believe there is going to be a need to recall you. However, that could happen. But you are free to go about your duties.

Let me give you one admonition or caution and piece of advice. As you undoubtedly know and have seen, there is journalists and media that expressed their interest in this case. They may or may not try to contact you. I can't tell you not to speak with them, but I would advise you to exercise extreme caution if you choose to do so. Don't say anything to them that you would not want to have repeated under oath in a court of law or in this hearing.

I would also advise you that you shouldn't talk about this case to anyone except the attorneys involved in this investigation or the attorneys for any other Marine that may be accused of some offenses. As you may know, there's other Marines being charged at special court-martial. I don't know what the status of those charges are, but you are obviously free to talk to those attorneys as well.

Do you have any questions?

WIT: No, sir.

IO: You are excused.

CC (Mr. Higgins): Sir, if I can I verify your phone number, staff Sergeant.

WIT: It's --

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Cpl (b)(6)

1. Describe all the "pointers" you received from other individuals and who did you receive them from?

2.

3.

4.

5.

Robert W. Sprague, Jr.
MEMBER'S PRINTED NAME

Robert W. Sprague
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELLATE EXHIBIT XCVI (96)

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Cpl (b)(6)

1. Was (b)(6) unsupervised while lying outside in the recreation pen?

2. If so, for how long?

3.

4.

5.

Capt D.R. Collins
MEMBER'S PRINTED NAME


MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT XC VII (97)

UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps Reserve

MOTION FOR APPROPRIATE
RELIEF

[Establish maximum sentence for
dereliction of duty specifications]

25 August 2004

1. **Nature of the Motion**: The defense moves the court to set the maximum sentence that can be adjudged against Sergeant Pittman, for each of the specifications under Charge I, alleging willful dereliction of duty by Sergeant Pittman, to be three months confinement, and forfeiture of pay for three months.
2. **Summary of Facts**: Sergeant Pittman is charged with two specifications of dereliction of duty stemming from the time that he was a guard at the Camp Whitehorse facility that was being used to hold Iraqi criminals and enemy prisoners of war. Each specification alleges that Sergeant Pittman was willfully derelict in the performance of his duties and that he had constructive knowledge of his duties while working at Camp Whitehorse.
3. **Discussion**: A specification that alleges that a Marine who has constructive knowledge of his duties and who is willfully derelict in the performance of those duties does not qualify for enhanced punishment under Article 92(3). U.S. v. Ferguson, 40 U.S. 823 (N-M.C.C.A. 1994). In order to apply the enhanced punishment for willful dereliction of duty the government must allege and prove that the accused has actual

APPELLATE EXHIBIT

XCVIII

PAGE

1

OF

3

known, his duty. Id. at 826.

The government in this case has alleged the following:

Specification 1: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, *who should have known of his duties*, at or near An-Nasiriyah, Iraq, from about 1 April 2003 to about 30 June 2003, was derelict in the performance of those duties, *in that he willfully failed to properly safeguard* the physical health, welfare, and treatment of unknown Iraqi prisoners of the Camp Whitehorse detention facility, as it was his duty to do.

Specification 2: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, *who should have known of his duties*, at or near An-Nasiriyah, Iraq, on or about 4 June 2003, was derelict in the performance of those duties, *in that he willfully failed to properly safeguard* the physical health, welfare, and treatment of (b)(6) as it was his duty to do.

In Ferguson the court held that specifications that allege willful dereliction of duty and that allege constructive knowledge of the duty in which the alleged dereliction exists, have a maximum punishment of three months confinement and loss of pay for three months. The specifications in this case allege willful dereliction based on constructive and not actual knowledge of the duty. As a result each specification should carry a maximum punishment of three months confinement and forfeiture of two-thirds pay per month for three months.

4. **Nature of Relief**: The defense requests that the court set the maximum punishment for each dereliction of duty specification at three months confinement and three months of forfeiture of pay.

5. **Evidence**: The defense has no evidence to present.


J. TRANBERG

APPELLATE EXHIBIT

XCVIII

PAGE

2

OF

3

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

PFC (b)(6)

1. CLARIFY WHO AUTHORIZED SGT/10 PRISONER OF HIET, OFFICERS,
SNCOIC OR DON'T KNOW?

2. DID YOU WITNESS EPW TREATMENT BY HIET?

3.

4.

5.

CARL SHELTON
MEMBER'S PRINTED NAME

Carl Shelton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT XCIX

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Pfc (b)(6)

1. ~~Does your training as a corrections officer provide you with steps/ procedures to handle complaint, passive resistant, active resistant and combative persons?~~
2. In your duties as a corrections officer are you aware of an age limit that prevents the use of pressure point / compliance techniques on inmates?
3. While serving as a corrections officer have you ever used compliance techniques on & handcuffed inmates?
4. ~~Can you explain the S S and T pr - Can a non compliant person~~
~~Do~~
5. Have you ever heard the terms mandibular angle, common peronial, and infra orbital?
~~If yes, can you point to these points / spots on the body and describe their use on non~~
compliant inmates?

Arthur Britton
MEMBER'S PRINTED NAME

Arthur Britton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT C

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

DFC (b)(6)

1. WAS MR. [REDACTED] WORKINGLY INJURED BLEEDING
WAS FROM OTHER FALL

2.

3.

4.

5.

CARL SMELTON
MEMBER'S PRINTED NAME

Carl Smelton
MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT

C1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Spec Agent (b)(6)

1. ~~PE 14~~ ^{by the head} Is that Blood and if so ~~where~~ is it coming from.
2. PE 14 Is that a Pool of Blood by the head?
3. were there signs of a head injury?
- 4.
- 5.

J. J. Coughlan
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
 X
DC X

APPELATE EXHIBIT

CII

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Col (b)(6)

- already answered →
1. Is it possible that a single kick to the sternum and/or the center of the chest could fracture ribs on both sides of the body?
 2. Is it possible or likely that the bone in the neck could be fractured by the victim's body being pulled/dragged by his head or neck?
 3. If the bone in the neck is broken, what would cause death? i.e. suffocation, bleeding or shock How long could it take to die?
 4. ~~Is ^{not} there~~ In regards to the hemorrhaging/bruising alone, is it possible to die from the bleeding or shock?

5.

CAPT D.R. COLLINS
MEMBER'S PRINTED NAME

Douglass Collins
MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT III

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

COL

(b)(6)

1. Did you determine or form an opinion on the cause of death? what was it?

2.

3.

4.

5.

Robert W Sprague, Jr.
MEMBER'S PRINTED NAME

Robert W. Sprague Jr.
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
X
DC X

with Appointed
Limiting
Instruction

APPELATE EXHIBIT

CIV

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

COL (b)(6)

1. ~~I~~ WAS IT YOUR DUTY TO DETERMINE
CAUSE OF DEATH?
2. IF SO, WHAT DID YOU DETERMINE?

3.

4.

5.

CAPT GILBERT
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
DC ~~X~~

APPELATE EXHIBIT

CV

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Col (b)(6)

1. How long before Death could the bruises on the back of the legs have been inflicted?
2. Was the cause of the uncontrolled defecation ever determined? I.E. disease
3. ~~Were the groins broken with the same impact?~~
4. ~~What kind of force would have been required to break groins.~~
5. _____

Col J. J. Coghlan
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT

CVI

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

COL (b)(6)

1. ~~HOW~~ WERE YOU TASKED TO DETERMINE THE CAUSE OF DEATH?
2. CAN YOU / DID YOU DETERMINE THE CAUSE OF DEATH? ... IF SO, WHAT WAS IT?
3. CAN YOU MAKE ANY CORRELATION TO THE VICTIM'S DIARRHEA?
- 4.
- 5.

DUDA, JOHN S. LTCOL
MEMBER'S PRINTED NAME


MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT TVII

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

COL (b)(6)

(THROAT)

1. WAS THE NECK ^(THROAT) FRACTURED? HOW EXTENSIVE?
ANTI-MORTUM OR POST-MORTUM? FOR MR. NATARE
2. WOULD THE SERIOUSNESS OF MR. NATARE'S BLUNT FORCE INJURIES
BE DETECTED BY A CORPSEMAN UPON INITIAL ^(PROSECUTION) OR WOULD THE CORPSEMAN MISS THE BLANKETS RIBS AND OTHER
3. INJURIES?
4. PLEASE STATE PRIMARY/ESTIMATE ^N CAUSE OF DEATH FOR MR. NATARE
- 5.

CARL SHELTON
MEMBER'S PRINTED NAME

Carl Shelton
MEMBER'S SIGNATURE

| | | | |
|-----|-----|----|-----|
| OBJ | 39A | NO | OBJ |
| TC | | X | |
| DC | | X | |

APPELATE EXHIBIT CVIII

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

COL (b)(6)

1. WHAT HAS CAUSED THE EXTREMELY RED AREA BETWEEN THE SHOULDER BLADES ON THE BODY IN PE 19 - LEVITIN
2. BESIDES THE OBVIOUS, THE BRUISES, AND THE BROKEN BONES; WHAT KIND OF SHAPE WAS (b)(6) IN (PRIOR TO DEATH AND INJURIES)?
3. DID (b)(6) HAVE ANY HEAD OR NECK INJURIES?
4. WHAT WAS THE CAUSE OF DEATH?
5. _____

LTCOL DAVIS
MEMBER'S PRINTED NAME

Robert E. Davis
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT

CIX

16C

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt X

1. After learning that ^{(b)(6)} did in fact participate in the ambush of the 507th, did you inform anybody at Camp Whitehorse?
2. Are H&T teams authorized to use physical force or sleep deprivation to obtain information?

3.

4.

5.

CAPT D.R. COLLINS
MEMBER'S PRINTED NAME


MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELATE EXHIBIT

CX

UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps Reserve

**MOTION FOR APPROPRIATE
RELIEF**

[Request for jury instruction regarding
appropriate use of force by a prison
guard]

30 August 2004

1. **Nature of the Motion:** The defense moves the court to adopt the enclosed jury instruction regarding the appropriate use of force at Camp Whitehorse.
2. **Summary of Facts:** Sergeant Pittman is charged with two specifications of dereliction of duty and two specifications of assault stemming from the time that he was a guard at the Camp Whitehorse facility. This facility was being used to hold Iraqi criminals and enemy prisoners of war. Evidence has been presented throughout the course of this case regarding the appropriate use of force by marines assigned to work at Camp Whitehorse as guards. There has been evidence about the types of force used by guards at Camp Whitehorse and that these uses of force by guards at Camp Whitehorse were condoned by a variety of commissioned officers and staff non-commissioned officers working at Camp Whitehorse. This includes the officer in charge of the detention facility located at Camp Whitehorse.

The types of force that were utilized by guards at Camp Whitehorse includes physical manipulation of detainees' arms and legs, the use of kicks and punches to get detainees to stand, physically picking up detainees, physically moving detainees, strip

searching detainees, forcibly opening various body cavities of detainees, palm strikes and other similar applications of force. This force was applied by guards at Camp Whitehorse to get detainees to comply with directions, to get detainees to move when needed, and utilized to get detainees to comply with the sleep deprivation regimen implemented by the Human Intelligence Exploitation teams. Detainees were also required to remain standing for periods of time to allow the detainees to get less sleep in the hope of making them more compliant when members of the Human Intelligence Team that worked at Camp Whitehorse interviewed them.

3. **Discussion**: The guards at Camp Whitehorse essentially operated as prison guards and as such should be afforded the same wide-ranging deference in the adoption and execution of their policies and practices that are accorded federal prison guards. Prison officials should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve good order and discipline and to maintain institutional security. Bell v. Wolfish, 441 U.S. 520. This deference extends to prison security measures taken in response to confrontations with inmates as well as to prophylactic or preventive measures intended to reduce the incidents of confrontation or other breaches of prison discipline. Whitley v. Albers, 475 U.S. 312, 322. (1986). Federal courts should afford appropriate deference and flexibility to prison officials who are trying to manage a volatile environment. Sandin v. Conner, 515 U.S. 472, 482 (1995). While this deference does not insulate actions taken in bad faith or without legitimate purpose it requires that neither a judge nor a jury freely substitute their judgment for that of prison officials who have to make a considered choice. Whitley, *supra* at 322.

The types of force regularly utilized by the members of the guard force at Camp Whitehorse, as detailed in paragraph two *supra*, do not involve the unnecessary and wanton infliction of pain and were legitimate and justified in that custodial setting. Force is deemed legitimate and justified in a custodial setting as long as it does not involve the unnecessary and wanton infliction of pain, that is, cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 103 (1976) citing Gregg v. Georgia, 428 U.S. 153, 173 (1976). To determine if an application of force involves the unnecessary and wanton infliction of pain, both objective and subjective components must exist. (1) "the deprivation [or injury] alleged must be, objectively, 'sufficiently serious', and (2) the prison official "must have a 'sufficiently culpable state of mind'." Farmer v. Brennan, 511 U.S. 825, 834 (1994). Under the objective prong, the absence of a showing of pain or injury will undermine the claim of excessive use of force. U.S. v. Sanchez, 53 M.J. 393, 395-96 (2000). Under the subjective prong, the question turns on whether force is applied "in a good faith effort to maintain or restore discipline [and not] maliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 320-321. The "malicious or sadistic" standard is appropriate in excessive force cases in part because the decision to use force is generally "made in haste, under pressure, and frequently without the luxury of a second chance." Farmer v. Brennan, 511 U.S. at 835. Based on the wide-ranging deference according federal prison guards regarding the use of force, the fact that prison guards at Camp Whitehorse essentially acted as federal prison guards – albeit in an even more fluid and less stable environment and without an ability to speak to those they were charged with guarding – an instruction reflecting this level of deference is appropriate.

4. **Nature of Relief**: The defense requests that the attached jury instruction be presented to the members on the use of force by guards at Camp Whitehorse.

5. **Evidence**: The defense has no evidence to present, however, the defense desires argument on this motion.


J. TRANBERG


W. A. FOLK

I CERTIFY THAT I SERVED A COPY OF THIS MOTION ON GOVERNMENT
COUNSEL ON 30 AUGUST 2004.


W. A. FOLK

APPELLATE EXHIBIT CXXXI/
PAGE 4 OF 6

**UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT**

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps Reserve

**DEFENSE REQUEST FOR JURY
INSTRUCTION REGARDING THE
USE OF FORCE BY PRISON GUARDS**

30 August 2004

1. Pursuant to the case law cited in the above brief, the defense respectfully requests that the court provide the members with the following instruction on the law regarding the use of force by prison guards.
2. The defense requests the following instruction:

You have heard evidence that guards at Camp Whitehorse applied force to detainees in a number of situations and in a number of different ways. The types of force that were utilized by guards at Camp Whitehorse includes physical manipulation of detainees' arms and legs, the use of kicks and punches to get detainees to stand and to move, physically picking up detainees, physically moving detainees, strip searching detainees, forcibly opening various body cavities of detainees, palm strikes and other similar applications of force. This force was applied by guards at Camp Whitehorse to get detainees to comply with directions, to get detainees to move when needed, and utilized to get detainees to comply with the sleep deprivation regimen implemented by the Human Intelligence Exploitation teams. Detainees were also required to remain standing for periods of time to allow the detainees less sleep in the hope of making them

more compliant when members of the Human Intelligence Team that worked at Camp Whitehorse interviewed them.

Force is deemed legitimate and justified in a custodial setting such as Camp Whitehorse as long as it is not cruel and usual punishment. Cruel and unusual punishment is that which involves the unnecessary and wanton infliction of pain. To determine if an application of force involves the unnecessary and wanton infliction of pain you must find that two factors exist. First, you must find that the deprivation or injury caused by the application of force is objectively, sufficiently serious. In reaching this determination you may consider whether the application of force results in a showing of pain or injury. A lack of injury or a showing of pain undermines the unnecessary nature of the application of force. Second, you must also determine whether the force is applied in a good faith effort to maintain or restore discipline and not maliciously or sadistically for the purpose of causing harm. If you do not find both factors, then the application of force does not involve the unnecessary and wanton infliction of pain and is deemed legitimate.

3. Respectfully Submitted,


J. TRANBERG


W. A. FOLK

APPELLATE EXHIBIT CXXXII
PAGE 5 6

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt (b)(6)

1. In what manner was (b)(6) dragged from his cell?
2. Was the 50/10 technique used at Camp Whitehorse?
3. Did (b)(6) ever indicate that he spoke or understood any English?
4. Did you ever witness anybody besides Sgt Pitmann or PFC (b)(6) strike a prisoner?
5. Did SSgt (b)(6) witness any prisoner being struck?

CAPT D.R. CULLING
MEMBER'S PRINTED NAME

Dan Williams
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELLATE EXHIBIT _____

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt (b)(6) _____

1. Are you familiar with the terms compliant and non-compliant?
If yes what do the terms mean?
2. Can a person actively resist directions? If yes how?
3. Can a person passively resist directions? If yes how?
4. When (b)(6) refused to ~~answer~~ respond to your attempts to communicate with him was he being compliant or non-compliant?
5. Did you think (b)(6) actions were passive or active acts of defiance? non compliance? Did any other detainees offer active or passive resistance to the Marines at Camp White Horse?

Arthur Britton
MEMBER'S PRINTED NAME

Arthur Britton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELLATE EXHIBIT _____

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt (b)(6)

1. Did any prisoner ever Reveal They were being abused.

2. Was (b)(6) uncooperatible behavior common to other prisoners.

3.

4.

5.

Col J. J. Coghlan
MEMBER'S PRINTED NAME


MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt. (b)(6)

1. DID YOU OBSERVE ANY NOTICEABLE INJURIES TO MR HATARD DURING OR AFTER HE WAS STRUCK? CHOKING? HEAVY BREATHING? SICKNESS? BLEEDING?
2. DID YOU OBSERVE MEIT TEAM ABUSE - TREATMENT OF EAFOR

3.

4.

5.

CARL SHELTON
MEMBER'S PRINTED NAME

Carl Shelton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Set

(b)(6)

1. What is your understanding as to the reason for the government's granting you immunity? Is it testimonial immunity? Did, or do you now, feel a threat or potential that you could be prosecuted for some offense? * Have you received NTP for anything in your career / if so, what and when? * If so, what offense?

3.

4.

5.

Robert W. Sprague Jr
MEMBER'S PRINTED NAME

Robert W. Sprague Jr
MEMBER'S SIGN.

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIB

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Hm 3 (b)(6)

1. Would the check to (b)(6) Sternum
Revealed 6 Broken ribs. For example screams of
Pain?
2. ~~Did you check Heart Beat, Blood Pressure
Temperature?~~
3. ~~Did you observe any bruises on Stomach
chest, Legs or Back of MA~~ (b)(6)
4. What are the symptoms of suffocation?
Did (b)(6) have them?
5. ~~Did he receive the same exam. a Marine
on Saiton would have?~~

Col J.J. Cogulan
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELLATE EXHIBIT 6

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Hu3 (b)(6)

1. Please elaborate on your findings (b)(6) ^{CONDITIONS} to ~~the~~ Major Paulus. During your testimony, ^{I thought} you mentioned "trauma", please elaborate.
2. You also mentioned bruising, in your opinion, what was the bruising from? Where were the bruises?
3. Can you name or remember any other detainees ~~and~~ describe their medical condition or needs?

DUDA, J.S. LTCOL
MEMBER'S PRINTED NAME


MEMBER'S SIGNATURE

OBJ 39A NO OBJ
TC X
DC X

APPELATE EXHIBIT _____

The defense believes that this witness testified there was no bruising. Ask the Court to clarify this issue

APPELATE EXHIBIT CXXXIX (139)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

MR (b)(6)

1. ~~Can a correction officer~~ Have you ever observed a correction officer strike an handcuffe
2. Are you familiar with the terms common peroneal and mandibular angle? If yes, can you identify/point to them?
3. Are these 2 points on the body used by correction officers to bring non-compliant inmates to compliance?
4. Can correction officers use to attack these 2 points on inmates that are handcuffed and or otherwise restrained? if the inmates are non compliant?
- 5.

Arthur Britton
MEMBER'S PRINTED NAME

Arthur Britton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

APPELLATE EXHIBIT CXL (140)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCpl (b)(6)

1. Did you personally actually visually witness the specific offload from the inmates of (b)(6) and/or the other detainees? If so, who/how were they offloaded?

2.

3.

4.

5.

Robert W Sprague Jr
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELLATE EXHIBIT _____

APPELLATE EXHIBIT CXLI (141)
PAGE 1 OF 1

UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT

| | | |
|---------------------------|---|--------------------------------------|
| UNITED STATES |) | |
| |) | MOTION FOR APPROPRIATE |
| v. |) | RELIEF |
| |) | |
| GARY P. PITTMAN |) | [Move to Dismiss charges pursuant to |
| (b)(6) |) | R.C.M. 917] |
| Sergeant |) | |
| U.S. Marine Corps Reserve |) | 31 August 2004 |
| |) | |

1. **Nature of the Motion:** The defense moves the court to dismiss Charge I and its two specifications pursuant to R.C.M. 917.
2. **Summary of Facts:** Sergeant Pittman is charged with two specifications of dereliction of duty stemming from the time that he was a guard at the Camp Whitehorse facility. These specifications allege that Sergeant Pittman was willfully derelict in the performance of his duties in that he failed to properly safeguard the physical health, welfare, and treatment of unknown Iraqi prisoners and of Mr. (b)(6) as it was his duty to do. Testimony at trial has provided no evidence that has attributed to Sergeant Pittman a duty to safeguard the physical health, welfare and treatment of unknown Iraqi prisoners. Furthermore, there has been no evidence presented at trial that Sergeant Pittman was ever trained in his duties as a Marine under the Geneva Conventions. Dr. Solis testified that a Sergeant of marines has no duty to provide infirmaries, canteens or other similar provisions to detainees in an Enemy Prisoner of War detention facility. There has been evidence that the Geneva Conventions exist, however, no evidence that Sergeant Pittman was aware of his duties or that he should

have been aware of his duties. There was no evidence presented by the government that the provisions of DOD directive 5100.77 were ever implemented in this case and that the requisite education of Marines took place.

In addition, no evidence was presented that unknown Iraqis were denied medical treatment or that their health and welfare was not safeguarded.

3. **Discussion:** The government has failed to provide any evidence which, together with all reasonable inferences and presumptions, could reasonably tend to establish every element of the offense of willful dereliction of duty. Even viewing the evidence in the light most favorable to the prosecution, without an evaluation of the credibility of witnesses, the government has not put on any evidence to show that Sergeant Pittman either actually knew, or should have known, of his duties to properly safeguard the physical health, welfare, and treatment of either unknown Iraqi prisoners or (b)(6). The government has not provided any evidence of the nexus between the duties owed to Enemy Prisoners of War and common criminals by signatories of the Geneva Convention and Sergeant Pittman's duties to safeguard the physical health, welfare and treatment of unknown Iraqi prisoners or (b)(6).

4. **Nature of Relief:** The defense requests that the court dismiss Charge I, and its two specifications. If the court does not believe that the specifications should be dismissed outright the defense requests the court to except the specifications to allege negligent dereliction of duty since there has been no evidence that Sergeant Pittman actually knew of his duties with regard to safeguarding the physical health, welfare and treatment of Iraqis.

5. Evidence: The defense has no evidence to present, however, the defense desires argument on this motion.


J. TRANBERG


W. A. FOLK

I CERTIFY THAT I SERVED A COPY OF THIS MOTION ON GOVERNMENT COUNSEL ON 31 AUGUST 2004.


W. A. FOLK

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

DR. PETERSON

1. ARE YOU BEING COMPENSATED FOR YOUR TESTIMONY?

2.

3.

4.

5.

CAPT DR. WILKINS

MEMBER'S PRINTED NAME

Dan Williams

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

APPELATE EXHIBIT CXLIII (143)

PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

PO: (b)(6)

1. In your estimation - How tall was Mr (b)(6) and how much did he weigh?

2.

3.

4.

5.

Arthur Britton
MEMBER'S PRINTED NAME

Arthur Britton
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
X
DC X

APPELLATE EXHIBIT _____

APPELLATE EXHIBIT CXIV (144)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

P.O. (b)(6)

1. Where ^{SALOS} OFFICERS present when PRISONERS were hit.
2. Were any OF the hits SUFFICIENT TO CAUSE BRUISES, BROKEN RIBS, OR CONTUSIONS.
- 3.
- 4.
- 5.

Col J. J. Coghlan
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELLATE EXHIBIT _____

APPELLATE EXHIBIT CXLV (145)

PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

PET Officer (b)(6)

1. WAS THERE EVER A NEED FOR YOU TO STRICK AN EPW DURING
YOU ASSIGNMENT AT CAMP WHITEHORSE? IF SO, WHY?
2. DID YOU HAVE TO TREAT ANY OTHER EPW'S WHILE AT CAMP WHITEHORSE?
IF SO, FOR WHAT HEALTH PROBLEMS?
3. WHAT WAS THE TIME YOU SAW MR. HATAKE ALIVE? WHAT WAS HIS
CONDITION AS YOU CAN RECALL IT?
- 4.
- 5.

CARL SHELTON

MEMBER'S PRINTED NAME

Carl Shelton

MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
 X
DC X

APPELATE EXHIBIT _____

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

MAJ (b)(6)

1. You testified that you observed the (b)(6) in-processing and strip search... and you testified that Sgt Pittman and PFC (b)(6) did not strike, hit or
2. knee the (b)(6) - is that correct?
3. PFC (b)(6) testified that he and Sgt Pittman kneeled (b)(6) during his inprocessing. - is PFC (b)(6) incorrect?
- 4.
- 5.

DUDA, J-S. LTCES

MEMBER'S PRINTED NAME

[Signature]

MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

DC

APPELLATE EXHIBIT _____

APPELLATE EXHIBIT CXLVII (147)

PAGE 1 OF 1



UNITED STATES MARINE CORPS
LEGAL SERVICES SUPPORT SECTION
1ST FORCE SERVICE SUPPORT GROUP, MARFORPAC
P. O. BOX 555607
CAMP PENDLETON, CALIFORNIA 92055-5606

IN REPLY REFER TO:
5811
LSST-E/mac
6 Jan 04

From: Trial Counsel
To: Lance Corporal (b)(6) USMCR

Subj: INVITATION TO ATTEND ARTICLE 32 HEARINGS TO BE HELD AT MARINE
CORPS BASE CAMP PENDLETON, CALIFORNIA BEGINNING 26 JANUARY 2004

Ref: (a) RCM 405(g)(3)

SUBJECT: INVITATION TO ATTEND ARTICLE 32 HEARINGS

1. Major Clark A. Paulus, Sergeant Gary P. Pittman, Lance Corporal (b)(6) and Lance Corporal (b)(6) are suspected of violating the Uniform Code of Military Justice. You are invited to testify at the Article 32 hearing in these cases. The hearings are currently set to commence on 26 January 2004 and last approximately seven days.

2. An Article 32 hearing is a pretrial investigation to determine the truth of the matters set forth in the charges, the form of the charges, and to secure information on which to determine what disposition should be made of the case. The function of the investigation is to ascertain and impartially weigh all available facts in arriving at conclusions and recommendations.

3. If you are available, the United States Government will pay expenses necessary to your attendance. These expenses may include travel expenses and per diem allowance. In any event, if you do not wish to testify you may not be compelled to attend. The choice of whether you will do so is entirely yours. Please contact either Capt J. M. McCall or Capt M. Crockett at 760-725-4613/4612 (mccalljm@1fssg.usmc.mil) so that the United States Government may determine your availability to attend during this time period.

Sincerely,

/s/ J. M. MCCALL
Captain, USMC
Prosecutor

I, LCpl (b)(6) received this Invitation To Attend Article 32 Hearings on 10th, January 2004.

Please circle: I accept invitation / I will provide telephonic testimony ☒ I decline to participate.

Contact information: (b)(6)

(b)(6)

APPELLATE EXHIBIT

CXLVIII (148)

PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LCpl (b)(6)

1. Following Mr. (b)(6) in processing - ~~Do you remember~~ Do you remember who escorted Mr. (b)(6) to the Holding Cell?
2. Did you observe Mr. (b)(6) trip or fall at anytime while you guarded him? If yes, describe the event(s).

3.

4.

5.

Arthur Britton
MEMBER'S PRINTED NAME

Arthur Britton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | + | |

APPELATE EXHIBIT ~~CXLIX~~ (149)

APPELATE EXHIBIT CXLIX (149)

PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LT COL (b)(6)

1. IN EARLY JUN 2003, WHAT WAS THE CHAIN OF COMMAND FROM
SGT PITTMAN TO THE BATTALION COMMANDER?

2.

3.

4.

5.

LT COL DAVIS
MEMBER'S PRINTED NAME

Davis
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT AL (150)

APPELATE EXHIBIT CL (150)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LtCol (b)(6)

1. Did the Bn headquarters receive any request from the Marines at the White Horse facility regarding EPW/detainee supplies? (flexicuffs, flexicuff cutters and additional clothing)
2. What was done to get these supplies?
- 3.
- 4.
- 5.

Arthur Britton
MEMBER'S PRINTED NAME

Arthur Britton
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

LT Col (b)(6)

1. Did the Order for 50/10 Sleep Deprivation
Come down the Chain of Command, ^{to Det. Facility} Was
The S-2 directly involved,

2.

3.

4.

5.

Col J.J. Coghlan
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

APPELATE EXHIBIT CL11
PAGE _____ OF 1

UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps

STIPULATION OF EXPECTED
TESTIMONY


1 September 2004

1. It is hereby agreed by and between trial counsel and defense counsel, with the express consent of the accused, that if Staff Sergeant (b)(6) were called as a witness in this case, he would testify substantially as follows: Sergeant (b)(6) never approached him while Sergeant (b)(6) worked at Camp Whitehorse and that he (Sergeant (b)(6)) never told Staff Sergeant (b)(6) that he (Sergeant (b)(6)) believed that the guards were mistreating detainees at Camp Whitehorse. Additionally, Staff Sergeant (b)(6) would testify that Sergeant (b)(6) never ^{to him} stated that he believed the Camp Whitehorse guard's treatment of detainees was a violation of the Geneva Convention.


J. TRANBERG
Civilian Defense Counsel


W. A. FOLK
Military Defense Counsel


L. J. FRANCIS
Trial Counsel


G. PITTMAN
Accused

APPELLATE EXHIBIT

CLIII (153)

PAGE

1

OF

1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt Pittman

1. why would (b)(6) say you kicked anyone in the chest

2.

3.

4.

5.

Col J. J. Coghlan

MEMBER'S PRINTED NAME

[Signature]

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELLATE EXHIBIT _____

APPELLATE EXHIBIT CLV (155)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt PITTMAN

1. Do you feel it ~~is~~ would be your duty to correct and report any prisoner abuse?
2. Did you ever see a prisoner abused?

3.

4.

5.

Capt D.R. Collins

MEMBER'S PRINTED NAME

D. Collins

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

APPELLATE EXHIBIT CLVI (156)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

SGT PITTMAN

1. When were you actually charged? Was it from
the incident or from PFC (b)(6) statement?
(NSP)

2.

3.

4.

5.

CAPT GILBERT
MEMBER'S PRINTED NAME

[Signature]
MEMBER'S SIGNATURE

TC OBJ 39A NO OBJ
 X

DC X *

APPELATE EXHIBIT _____

APPELATE EXHIBIT CLV11 (157)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt Pittman

1. Did the Ambush of the 507th MAINT Cause you to treat (b)(6) and the (b)(6) twins different from other detainees

2.

3.

4.

5.

Col J. J. Coghlan

MEMBER'S PRINTED NAME

[Signature]

MEMBER'S SIGNATURE

| | | | | |
|----|-----|-----|----|-----|
| | OBJ | 39A | NO | OBJ |
| TC | | | X | |
| DC | | | X | |

APPELATE EXHIBIT _____

APPELLATE EXHIBIT CLVIII (158)
PAGE 1 OF 1

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Sgt PITTMAN

1. Do you feel it ~~is~~ would be your duty to correct and report any prisoner abuse?

2. Did you ever see a prisoner abused?

3.

4.

5.

Capt D.B. Collins

MEMBER'S PRINTED NAME

D.B. Collins

MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

X

DC

X

APPELATE EXHIBIT _____

APPELLATE EXHIBIT CLVI (156)

PAGE 1 OF 1

Members of the court, at this time I will instruct you on the law to be applied in this case. When you close to deliberate and vote on the findings, each of you must resolve the ultimate question of whether the accused is guilty or not guilty based upon the evidence presented here in court and the instructions which I will give you. It is my duty to instruct you on the law. It is your duty to determine the facts, apply the law to the facts, and thus determine the guilt or innocence of the accused, bearing in mind, again, that the law presumes the accused to be innocent of the charges against him.

You just heard an exposition of the facts by counsel for both sides as they view them. Bear in mind that the arguments of counsel are not evidence. Argument is made by counsel in order to assist you in understanding and evaluating the evidence. You must base the determination of the issues in the case on the evidence as you remember it.

Counsel may have referred to instructions that I will give you, and in that regard, I would merely say that if there is any inconsistency between what counsel say about the instructions and the instructions I give you, you must accept my statement as being correct.

During the trial some of you may have taken notes. You may take your notes with you into the deliberation room. However, your notes are not a substitute for evidence admitted in the trial and should not be shown to the other members. You may use your notes to refresh your own recollection.

You may find the accused guilty of an offense only if you are convinced as to guilt by legal and competent evidence beyond a reasonable doubt as to each and every element of that offense. I'll now discuss the offenses with you in the order in which they appear on your copy of the charge sheet.

In specification 1 of Charge I, the accused is charged with the offense of dereliction of duty. In order to find the accused guilty of this offense, you must be convinced by legal and competent evidence beyond reasonable doubt:

(1) That the accused had certain prescribed duties, that is: to safeguard the physical health, welfare, and treatment of Iraqi prisoners of the Camp Whitehorse detention facility;

(2) That the accused reasonably should have known of the assigned duties; and

(3) That at or near An Nasiriyah, Iraq, from about 1 April 2003 to about 30 June 2003, the accused was derelict in the performance of those duties, by:

a: Directing and allowing PFC (b)(6) to strike, punch, kick, and knee an unknown (b)(6) and other prisoners without legal justification or authorization;

b: Using excessive force to pull two Iraqi prisoners from the back of a HUMMV while their hands were flexicuffed behind their back and they were blindfolded, thereby causing them to land on their buttock.

In specification 2 of Charge I, the accused is charged with the offense of dereliction of duty. In order to find the accused guilty of this offense, you must be convinced by legal and competent evidence beyond reasonable doubt:

(1) That the accused had certain prescribed duties, that is: to safeguard the physical health, welfare, and treatment of (b)(6)

(2) That the accused reasonably should have known of the assigned duties; and

(3) That at or near An Nasiriyah, Iraq, on or about 4 June 2003, the accused was derelict in the performance of those duties, by:

a: Allowing his subordinate, PFC (b)(6) to strike Mr. (b)(6) in the legs and stomach without legal justification or authorization;

b: Allowing his subordinate, PFC (b)(6) to grab Mr. (b)(6) by the throat without legal justification or authorization;

c. Failing to notify medical personnel of (b)(6) apparent need for medical treatment.

A duty may be imposed by regulation or lawful order. A person is "derelict" in the performance of duty when he willfully or negligently fails to perform them. Dereliction is defined as a failure in duty, a shortcoming, or delinquency.

"Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act.

That an individual reasonably should have known of duties may be demonstrated by regulations, manuals, customs, academic literature, or testimony of persons who have held similar or related positions or similar evidence.

If after considering the specifications under Charge I you are satisfied beyond a reasonable doubt as to each element of each specification except you have a reasonable doubt that the conduct of the accused was willful, you should consider whether the acts were negligent.

"Negligently" means an act or failure to act by a person under a duty to use due care which demonstrates a lack of care for the physical health, welfare, and treatment of an individual under his care and control which a reasonably prudent person would have used under the same or similar circumstances.

If you are satisfied beyond a reasonable doubt that the acts of the accused were negligent, then you should find him guilty of negligent dereliction. To do this you must modify the specification by excepting out the word willfully and substituting the word negligently. The findings work sheet, which we will discuss in a moment, has been modified to allow you to do this.

In specification 1 of Charge II, the accused is charged with the offense of assault consummated by a battery. In order to find the accused guilty of this offense, you must

be convinced by legal and competent evidence beyond reasonable doubt:

(1) That at or near An-Nasiriyah, Iraq between on or about 1 April 2003 and 30 June 2003, the accused did bodily harm to unknown Iraqi prisoners of the Camp White Horse detention facility;

(2) That the accused did so by striking them on their bodies with his hands, knees, and feet; and

(3) That the bodily harm was done with unlawful force or violence.

In specification 2 of Charge II, the accused is charged with the offense of assault consummated by a battery. In order to find the accused guilty of this offense, you must be convinced by legal and competent evidence beyond reasonable doubt:

(1) That at or near An-Nasiriyah, Iraq on or about 4 June 2003, the accused did bodily harm to (b)(6)

(2) That the accused did so by punching him in the body with his hands and kicking him in the body with his feet; and

(3) That the bodily harm was done with unlawful force or violence.

An assault is an attempt or offer with unlawful force or violence to do bodily harm to another. An assault in which bodily harm is inflicted is called a battery. A "battery" is an unlawful and intentional application of force or violence to another. The act must be done without legal

justification or excuse and without the lawful consent of the victim. "Bodily harm" means any physical injury to or offensive touching of another person, however slight.

A person who, although legally justified in using force, uses more force than is required commits a battery. You have heard testimony that the Guards at the Camp Whitehorse EPW facility were authorized to use the minimum force necessary to ensure a safe environment for both the Guards and the EPWs. The Guards were also authorized to use the minimum force necessary to ensure that the EPWs complied with a Guard's instructions to include the 50/10 sleep deprivation technique. Minimum force necessary includes such acts as returning an EPW's hand to the wall during in-processing, manually moving EPWs to show desired actions, manually guiding them while the EPWs were blindfolded with sand bags, strip searching EPWs, as well as assisting an EPW to stand and other similar acts necessary to obtain EPW compliance with instructions from the guards and overcome language difficulties. Guards were also authorized to use force to include deadly force in self-defense. You are instructed that any force in excess of the minimum force necessary to ensure compliance with orders, movement of EPWs, and manual movement of EPWs, which was not used in self-defense would be excessive and therefore constitute a battery. The determination of whether the amount of force used was reasonable, if force was used, is a question for you the members of the court. In deciding if the force was reasonable, you are advised that force is reasonable if a person under the same or similar circumstances would consider it necessary under the circumstances to accomplish

a lawful purpose. Additionally, the accused must have believed it necessary.

You are further advised:

First, that the accused is presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

Second, if there is a reasonable doubt as to the guilt of the accused, that doubt must be resolved in favor of the accused, and he must be acquitted;

Third, if there is a reasonable doubt as to the degree of guilt, that doubt must be resolved in the favor of the lowest degree of guilt as to which there is no reasonable doubt;

The burden of proof to establish the guilt of the accused beyond a reasonable doubt is on the government. The burden never shifts to the accused to establish innocence or to ~~disprove the facts necessary to establish each element of~~ each offense alleged.

By reasonable doubt is intended not a fanciful, speculative, or ingenious doubt or conjecture, but an honest and actual doubt suggested by the material evidence or lack of it in the case. It is a genuine misgiving caused by insufficiency of proof of guilt. Reasonable doubt is a fair and rational doubt based upon reason and common sense and arising from the state of the evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the accused's guilt. There are very few things in this world that we know with absolute certainty, and in criminal

cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the accused is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

The rule as to reasonable doubt extends to every element of the offense, although each particular fact advanced by the prosecution that does not amount to an element need not be established beyond a reasonable doubt. However, if on the whole evidence, you are satisfied beyond a reasonable doubt of the truth of each and every element, then you should find the accused guilty.

The parties to this trial stipulated or agreed that if SSgt (b)(6) were present in court he would have testified under oath substantially as was read to you. This stipulation does not admit the truth of the testimony which may be attacked, contradicted, or explained in the same way as any other testimony. You may consider, along with all other factors affecting believability, the fact that you have not had an opportunity to personally observe this witness when testifying to this matter.

You have heard evidence that PO (b)(6) LCpl (b)(6) , PFC (b)(6) and LCpl (b)(6) made statements prior to trial that may be inconsistent with their testimony at this trial. Specifically, PO (b)(6) LCpl (b)(6) , and PFC (b)(6) made statements concerning the force they saw used and LCpl (b)(6) made a statement concerning the use of sleep deprivation techniques. If you believe that inconsistent

statements were made, you may consider the inconsistencies in evaluating the credibility of the testimony of these witnesses. You may not, however, consider the prior statement as evidence of the truth of the matters contained in that prior statement.

Evidence may be direct or circumstantial. Direct evidence is evidence which tends directly to prove or disprove a fact in issue. If a fact in issue was whether it rained during the evening, testimony by a witness that he or she saw it rain would be direct evidence that it rained.

On the other hand, circumstantial evidence is evidence which tends to prove some other fact from which, either alone or together with some other facts or circumstances, you may reasonably infer the existence or nonexistence of a fact in issue. If there was evidence the street was wet in the morning, that would be circumstantial evidence from which you might reasonably infer it rained during the night.

There is no general rule for determining or comparing the weight to be given to direct or circumstantial evidence. You should give all the evidence the weight and value you believe it deserves.

To show the probability of his innocence, the defense has produced evidence of the accused's good military character. Evidence of the accused's good military character may be sufficient to cause a reasonable doubt as to his guilt. On the other hand, evidence of the accused's good military character may be outweighed by other evidence tending to show the accused's guilt.

You have the duty to determine the believability of the witnesses. In performing this duty you must consider each witness' intelligence, ability to observe and accurately remember, sincerity and conduct in court, prejudices, and character for truthfulness. Consider also the extent to which each witness is either supported or contradicted by other evidence; the relationship each witness may have with either side; and how each witness might be affected by the verdict.

In weighing discrepancies by a witness or between witnesses, you should consider whether they resulted from an innocent mistake or a deliberate lie.

Taking all these matters into account, you should then consider the probability of each witness' testimony and the inclination of the witness to tell the truth.

The believability of each witness' testimony should be your guide in evaluating testimony and not the number of witnesses called.

Evidence has been received as to PFC (b)(6) bad character for truthfulness. You may consider this evidence in determining PFC (b)(6) believability.

These rules apply equally to the testimony given by the accused.

Maj (b)(6) SSgt (b)(6) PO (b)(6) Sgt (b)(6)
LCpl (b)(6), PFC (b)(6) and Mr. (b)(6) testified under a grant of immunity. This means that these witnesses were ordered to testify truthfully by the convening authority. Under these grants of immunity, nothing the witnesses said,

and no evidence derived from that testimony, can be used against that witness in a criminal trial.

If the witnesses did not tell the truth, the witnesses can be prosecuted for perjury. In determining the credibility of these witnesses, you should consider the fact these witnesses testified under grants of immunity along with all the other factors that may affect the witness' believability.

A witness is an accomplice if he was criminally involved in an offense with which the accused is charged. The purpose of this advice is to call to your attention a factor specifically affecting the witness' believability, that is, a motive to falsify his testimony in whole or in part, because of an obvious self-interest under the circumstances.

For example, an accomplice may be motivated to falsify testimony in whole or in part because of his own ~~self-interest in receiving immunity from prosecution or~~ leniency in disposition of charges against him.

In deciding the believability of PFC (b)(6) LCpl (b)(6), Sgt (b)(6) Mr. (b)(6), SSgt (b)(6), and PO (b)(6) you should consider all the relevant evidence including but not limited to their potential involvement in inflicting injuries on (b)(6) and other prisoners and their desire to minimize any punitive actions against him.

Whether PFC (b)(6) LCpl (b)(6), Sgt (b)(6) Mr. (b)(6) SSgt (b)(6), and PO (b)(6) who testified as witnesses in this case, were accomplices is a question for you to decide. If PFC (b)(6) LCpl (b)(6) Sgt (b)(6) Mr.

(b)(6) SSgt (b)(6) and PO (b)(6) shared the criminal intent or purpose of the accused, if any, or aided, encouraged, or in any other way criminally associated or involved themselves with the offenses with which the accused is charged, they would be accomplices.

As I indicated previously, it is your function to determine the credibility of all the witnesses, and the weight, if any, you will accord the testimony of each witness.

Although you should consider the testimony of an accomplice with caution, you may convict the accused based solely upon the testimony of an accomplice, as long as that testimony was not self contradictory, uncertain, or improbable.

You have heard the testimony of Drs. (b)(6)

(b)(6) . They are known as "expert witnesses" because their knowledge, skill, experience, training, or education may assist you in understanding the evidence or in determining a fact in issue. You are not required to accept the testimony of an expert witness or give it more weight than the testimony of an ordinary witness. You should, however, consider their qualifications as experts.

When an expert witness answers a hypothetical question, the expert assumes as true every asserted fact stated in the question. Therefore, unless you find that the evidence establishes the truth of the asserted facts in the hypothetical question, you cannot consider the answer of the expert witness to that hypothetical question.

There has been evidence that after the offenses were allegedly committed, the accused may have made a false statement about the alleged offenses, specifically that when confronted by Sergeant (b)(6) that the accused's use of force on prisoners was excessive and illegal pursuant to the Geneva Convention, the accused told Sergeant (b)(6) that he was a (b)(6)
(b)(6)

Conduct of an accused, including statements made and acts done upon being informed that a crime may have been committed or upon being confronted with a criminal charge, may be considered by you in light of other evidence in the case in determining the guilt or innocence of the accused.

1 If an accused voluntarily offers an explanation or makes some statement tending to establish his innocence, and such explanation or statement is later shown to be false, you may consider whether this circumstantial evidence points to a consciousness of guilt. You may infer that an innocent person does not ordinarily find it necessary to invent or fabricate a voluntary explanation or statement tending to establish his innocence. The drawing of this inference is not required.

Whether the statement was made, was voluntary, or was false is for you to decide.

You may also properly consider the circumstances under which the statement was given, such as whether they were given under oath, and the environment under which it was.

Whether evidence as to an accused's voluntary explanation or statement points to a consciousness of guilt, and the significance, if any, to be attached to any such evidence, are matters for determination by you, the court members.

Any person who commits an offense is a principal. Any person who knowingly and willfully counsels, commands, or procures another to commit an offense is also a principal and is just as guilty as the person who actually committed the offense. Presence at the scene of the crime is not required. "Counsel" means to advise, recommend, or encourage. "Command" means an order given by one person to another, who, because of the relationship of the parties, is under an obligation or sense of duty to obey the order. "Procure" means to bring about or cause. If the offense is committed, even if it is accomplished in a different manner

from that counseled, commanded, or procured, the person who counseled, commanded, or procured the commission of the offense is guilty of the offense. Once the act counseled, commanded, or procured by a person is done, he is criminally responsible for all the likely results that may occur from the doing of that act.

If you are satisfied beyond a reasonable doubt that Sgt Pittman knowingly and willfully counseled, commanded, or procured the commission of an offense with which he is charged, you may find him guilty of that offense even though he was not the person who actually committed the crime.

An accused may be convicted based only on evidence before the court. Each offense must stand on its own and you must keep the evidence of each offense separate. Stated differently, if you find or believe that the accused is guilty of one offense, you may not use that finding or belief as a basis for inferring, assuming, or proving that he committed any other offense.

If evidence has been presented which is relevant to more than one offense, you may consider that evidence with respect to each offense to which it is relevant. For example, if a person were charged with stealing a knife and later using that knife to commit another offense, evidence concerning the knife, such as that person being in possession of it or that person's fingerprints being found on it, could be considered with regard to both offenses. But, the fact that a person's guilt of stealing the knife may have been proven is not evidence that the person is also guilty of any other offense.

The burden is on the prosecution to prove each and every element of each offense beyond a reasonable doubt. Proof of one offense carries with it no inference that the accused is guilty of any other offense.

You have heard evidence that (b)(6) died and evidence of the autopsy. The accused is not charged with the death of (b)(6). The evidence of his death and of the subsequent autopsy may be considered by you in understanding the nature and extent of any injuries suffered by (b)(6) and the circumstances surrounding their discovery. It may also be considered by you in your consideration of the offenses charged under specification 2 of Charge I and II.

If you have doubt about the time, place, or manner in which the injuries described in the specification were inflicted, but you are satisfied beyond a reasonable doubt that the offense was committed at a time, at a place, or in a particular manner which differs slightly from the exact time, place, or manner in the specification, you may make minor modifications in reaching your findings by changing the time, place, or manner in which the alleged injuries described in the specification were inflicted described in the specification, provided that you do not change the nature or identity of the offense.

You should bear in mind that only matters properly before the court as a whole should be considered, and in weighing and evaluating the evidence you are expected to utilize your own common sense and your knowledge of human nature and the ways of the world. In light of all the circumstances in the case, you should consider the inherent probability or improbability of the evidence. Bear in mind

you may properly believe one witness and disbelieve several other witnesses whose testimony is in conflict with the one. The final determination as to the weight or significance of the evidence and the credibility of the witnesses in this case rests solely upon you, the members of the court.

You must disregard any comment or statement made by me during the course of the trial that might seem to indicate to you an opinion on my part as to whether the accused is guilty or not guilty since you, and you alone, have the responsibility to make that determination. As court members, each of you must impartially resolve this ultimate issue in accordance with the law I have given you, the evidence admitted in court, and your own conscience.

The following procedural rules will apply to your deliberation and must be observed. The influence of superiority in rank will not be employed in any manner in an attempt to control the independence of the members in the exercise of their own personal judgment. Your deliberations should properly include a full and free discussion of all the evidence that has been presented. After you have completed your discussion, then voting on your findings must be accomplished by secret written ballot, and all members of the court must vote.

You vote on the specifications under the charge before you vote on the charge. The order in which the several charges and specifications are to be voted on should be determined by the president subject to objection by a majority of the members. If you find the accused guilty of any

specification under a charge, the finding as to that charge is guilty.

The junior member collects and counts the votes, and the count is checked by the president, who immediately announces the result of the ballot to the members.

The concurrence of at least two thirds of the members present when the vote is taken is required for any finding of guilty. Since we have 9 members, that means that 6 members must concur in any finding of guilty. If you have 6 votes of guilty with regard to the offense, then that will result in a finding of guilty for that offense. If fewer than 6 members vote for a finding of guilty, then your ballot resulted in a finding of not guilty.

If a finding of not guilty is made to an offense, vote next on the lesser included offenses. If a finding of guilty is made, you have convicted the accused of that lesser included offense. If you have voted on the lesser included offenses and a finding of not guilty is made as to all lesser included offenses, you have acquitted the accused of this specification and its lesser included offense.

You may reconsider any finding prior to its being announced in open court. However, after you vote, if any member expresses a desire to reconsider any finding, open the court and I'll give you specific further instructions on how to go about doing that. If that should occur, when the court has assembled, the president will not announce the findings reached but will announce only that reconsideration of a finding has been proposed. Do not state (1) whether the finding proposed to be reconsidered

is a finding of guilty or not guilty, or (2) which specification and charge is involved.

As soon as the court has reached its findings, and I have examined the findings worksheet, the findings will be announced by the president in the presence of all parties. The format is set out for you in the findings worksheet, Appellate Exhibit _____. The bailiff will deliver Appellate Exhibit _____ to the president of the court at this time.

You may use the findings worksheet as an aid in putting your findings in proper form. The first portion of the worksheet will be used if the accused is acquitted or convicted of all charges and specifications. The second part will be used if the accused is convicted of some, but not all, of the offenses. The third part will be used if you find by exceptions and substitutions. Once you have finished filling in what is applicable, cross out everything that is not applicable.

If, during your deliberations, you have any questions concerning the findings worksheet or any other matter, please open the court and I will take those matters up with you. I would ask that if you do have any such question, that you write it down on one of the question forms provided so that an accurate record of your question can be maintained.

In your deliberation room, you will have all the exhibits that have been admitted into evidence. Please do not write on any of these exhibits except obviously for the findings worksheet. The Uniform Code of Military Justice prohibits me or anyone else from entering your closed session

deliberation. You may not consult the Manual for Courts-Martial or any other legal publication.

IN THE SIERRA JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES)

v.)

Gary P. Pittman)
Sergeant)

(b)(6))

U.S. Marine Corps)

FINDINGS

WORKSHEET

[NOTE: After the court members have reached their findings, the President shall strike out all inapplicable language. After the Military Judge has reviewed the worksheet, the President will announce the findings by reading the remaining language. The President will not read the language in bold print.]

Sergeant Gary P. Pittman, this court-martial finds you:

I. Of all Charges and Specifications: ~~(Not Guilty)~~ (Guilty)

II. Mixed Findings

Specification 1 of Charge I: ~~(Not Guilty)~~ (Guilty)

Specification 2 of Charge I: ~~(Not Guilty)~~ (Guilty)

Of Charge I: ~~(Not Guilty)~~ (Guilty)

Specification 1 of Charge II: ~~(Not Guilty)~~ (Guilty)

Specification 2 of Charge II: ~~(Not Guilty)~~ (Guilty)

Of Charge II: ~~(Not Guilty)~~ (Guilty)

III. Findings by Exceptions and Substitutions

Specification 1 of Charge I: ~~(Not Guilty)~~ (Guilty)

(Guilty, Except the words: Substantially
UNKNOWN IRAN, SHIRT AND OTHER
AND THE SUBSTANTIAL
Substituting therefore the words: UNKNOWN

Of the excepted words, Not Guilty, of the substituted words, Guilty.

Specification 2 of Charge I:

(Not Guilty) (Guilty)

(Guilty, Except the words: _____

Substituting therefore the words: _____

Of the excepted words, Not Guilty, of the substituted words, Guilty.

Of Charge I:

(Not Guilty) (Guilty)

Specification 1 of Charge II:

(Not Guilty) (Guilty)

(Guilty, Except the words: _____

Substituting therefore the words: _____

Of the excepted words, Not Guilty, of the substituted words, Guilty.

Specification 2 of Charge II:

(Not Guilty) (Guilty)

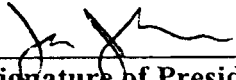
(Guilty, Except the words: _____

Substituting therefore the words: _____

Of the excepted words, Not Guilty, of the substituted words, Guilty.

Of Charge II:

(Not Guilty) (Guilty)


Signature of President

ARTICLE 17, SECTION 1 CLX
PAGE 2 OF 2

IN THE SIERRA JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

| | | |
|-------------------|---|-----------|
| UNITED STATES |) | |
| |) | |
| v. |) | SENTENCE |
| |) | |
| Pittman, Gary P. |) | WORKSHEET |
| (b)(6) |) | |
| Sergeant |) | |
| U.S. Marine Corps |) | |

[NOTE: After the court members have reached their sentence, the President shall strike out all inapplicable language. After the Military Judge has reviewed the worksheet, the President will announce the sentence by reading the remaining language. The President will not read the language in bold or italicized print.]

Sergeant Gary P. Pittman, this court-martial sentences you;

NO PUNISHMENT

☐ To no punishment.

REPRIMAND

☐ To be reprimanded.

NOTE: The court may not specify the terms of wording of a reprimand.

REDUCTION

☒ To be reduced to the grade of E- 1.

FORFEITURES

☐ To forfeit \$ _____ .00 of your pay per month for _____ months.

NOTE: Forfeitures should be specified in whole dollar amounts. Any forfeitures in excess of one month should specify the amount per month to be deducted from the member's pay.

☐ To forfeit all pay and allowances.

RESTRAINT

☐ To be confined for (_____ months) (_____ days).

NOTE: The court may not specify the place or manner of confinement. Confinement may not exceed six months.

☒ To perform hard labor without confinement for (_____ months) (60 days).

NOTE: Hard labor without confinement may not exceed three months.

☒ To be restricted to the limits of Economic Warfare Dynamics
for a period of (_____ months) (60 days). Baron Soap

NOTE: Restriction may not exceed two months.

PUNITIVE DISCHARGE

☐ To be discharged from the service with a bad conduct discharge.



Signature of President

2004 BASIC PAY

Active-duty members will get a minimum 3.7 percent increase in basic pay under the 2004 defense authorization bill. Higher targeted raises of 4.6 percent to 6.25 percent for some midlevel and senior noncommissioned officers as well as some warrant officers will make the overall average increase 4.1 percent. The 2004 pay raise plan that will take effect Jan. 1:

| Grade | <2 | 2 | 3 | 4 | 6 | 8 | 10 | 12 | 14 | 16 | 18 | 20 | 22 | 24 | 26 |
|-----------------------|-----------|-----------|-----------|-----------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|-----------|----------|
| Commissioned officers | 12,524.70 | 12,586.20 | 12,647.80 | 13,303.80 | | | | | | | | | | | |
| 0-10 | 10,954.50 | 11,112.30 | 11,340.30 | 11,738.40 | | | | | | | | | | | |
| 0-9 | 7,751.10 | 8,004.90 | 8,173.20 | 8,220.60 | 8,430.30 | 8,781.90 | 8,863.60 | 9,197.10 | 9,292.60 | 9,579.80 | 9,995.70 | 10,379.10 | 10,635.30 | 10,635.30 | 9,433.50 |
| 0-8 | 6,440.70 | 6,739.80 | 6,878.40 | 6,988.50 | 7,187.40 | 7,384.20 | 7,611.90 | 7,839.00 | 8,066.70 | 8,781.90 | 9,386.10 | 9,386.10 | 9,386.10 | 9,386.10 | 9,433.50 |
| 0-7 | 4,773.60 | 5,244.30 | 5,588.40 | 5,609.70 | 5,850.00 | 5,882.10 | 5,882.10 | 5,882.10 | 6,216.30 | 6,807.30 | 7,154.10 | 7,500.80 | 7,698.30 | 7,897.80 | 8,285.40 |
| 0-6 | 3,979.50 | 4,482.90 | 4,793.40 | 4,851.60 | 5,044.80 | 5,161.20 | 5,415.90 | 5,602.80 | 5,844.00 | 6,213.60 | 6,389.70 | 6,563.40 | 6,760.80 | 6,760.80 | 6,760.80 |
| 0-5 | 3,493.50 | 3,974.70 | 4,239.90 | 4,299.00 | 4,545.30 | 4,609.30 | 5,137.80 | 5,394.00 | 5,671.60 | 5,671.60 | 5,733.00 | 5,733.00 | 5,733.00 | 5,733.00 | 5,733.00 |
| 0-4 | 3,018.90 | 3,422.40 | 3,693.90 | 4,027.20 | 4,220.10 | 4,431.60 | 4,568.70 | 4,794.30 | 4,911.30 | 4,911.30 | 4,911.30 | 4,911.30 | 4,911.30 | 4,911.30 | 4,911.30 |
| 0-3 | 2,608.20 | 2,970.60 | 3,421.50 | 3,537.00 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 | 3,609.90 |
| 0-2 | 2,264.40 | 2,356.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 | 2,848.50 |
| 0-1 | | | | | | | | | | | | | | | |

Commissioned officers with more than four years of active duty as enlisted members or warrant officers

| | | | | | | | | | | | | | | | |
|------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| 0-3E | 4,402.20 | 4,422.10 | 4,431.60 | 4,431.60 | 4,794.30 | 4,984.20 | 5,092.80 | 5,241.30 | 5,241.30 | 5,241.30 | 5,241.30 | 5,241.30 | 5,241.30 | 5,241.30 | 5,241.30 |
| 0-2E | | | | | 3,537.00 | 3,609.90 | 3,724.80 | 3,918.60 | 4,068.60 | 4,180.20 | 4,180.20 | 4,180.20 | 4,180.20 | 4,180.20 | 4,180.20 |
| 0-1E | 2,848.50 | 3,042.80 | 3,164.50 | 3,269.40 | 3,382.20 | 3,537.00 | 3,537.00 | 3,537.00 | 3,537.00 | 3,537.00 | 3,537.00 | 3,537.00 | 3,537.00 | 3,537.00 | 3,537.00 |

Warrant officers (Army, Navy, Marine Corps only)

| | | | | | | | | | | | | | | | |
|-----|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| W-5 | 3,119.40 | 3,355.80 | 3,452.40 | 3,547.20 | 3,710.40 | 3,871.50 | 4,035.00 | 4,194.30 | 4,359.00 | 4,617.30 | 4,782.60 | 4,944.30 | 5,112.00 | 5,277.00 | 5,445.90 |
| W-4 | 2,848.80 | 2,967.90 | 3,089.40 | 3,129.30 | 3,257.10 | 3,403.20 | 3,595.80 | 3,786.30 | 3,988.80 | 4,140.60 | 4,291.80 | 4,456.90 | 4,624.10 | 4,770.20 | 4,916.30 |
| W-3 | 2,505.90 | 2,649.00 | 2,774.10 | 2,865.30 | 2,943.30 | 3,157.80 | 3,321.60 | 3,443.40 | 3,562.20 | 3,643.80 | 3,712.50 | 3,843.00 | 3,972.60 | 4,103.70 | 4,237.70 |
| W-2 | 2,212.80 | 2,394.00 | 2,515.20 | 2,599.50 | 2,802.30 | 2,928.30 | 3,039.90 | 3,164.70 | 3,227.20 | 3,321.90 | 3,443.70 | 3,535.80 | 3,535.80 | 3,535.80 | 3,535.80 |
| W-1 | | | | | | | | | | | | | | | |

Enlisted members

| | | | | | | | | | | | | | | | |
|-----|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| E-9 | | | | | | | | | | | | | | | |
| E-8 | 3,085.50 | 3,222.00 | 3,306.30 | 3,407.70 | 3,517.50 | 3,619.60 | 3,715.50 | 3,815.70 | 3,986.40 | 4,081.20 | 4,314.30 | | | | |
| E-7 | 2,145.00 | 2,341.20 | 2,430.60 | 2,549.20 | 2,642.10 | 2,801.40 | 2,891.10 | 2,980.20 | 3,139.80 | 3,219.60 | 3,295.50 | 3,341.70 | 3,498.00 | 3,599.10 | 3,855.00 |
| E-6 | 1,855.50 | 2,041.20 | 2,131.20 | 2,218.80 | 2,310.00 | 2,516.10 | 2,596.20 | 2,685.30 | 2,763.30 | 2,790.90 | 2,809.80 | 2,809.80 | 2,809.80 | 2,809.80 | 2,809.80 |
| E-5 | 1,700.10 | 1,813.50 | 1,901.10 | 1,991.10 | 2,180.60 | 2,250.90 | 2,339.70 | 2,367.90 | 2,367.90 | 2,367.90 | 2,367.90 | 2,367.90 | 2,367.90 | 2,367.90 | 2,367.90 |
| E-4 | 1,558.20 | 1,638.30 | 1,726.80 | 1,814.10 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 | 1,891.50 |
| E-3 | 1,407.00 | 1,495.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 | 1,585.50 |
| E-2 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 | 1,337.70 |
| E-1 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 | 1,193.40 |

E-1 with less than four months: 1,104.00

Source: Defense Department, 2004 defense authorization bill

ber 17, 2003

MEMBER'S QUESTION(S)

NAME OF WITNESS TO WHOM QUESTION(S) IS/ARE DIRECTED:

Mr Martin

1. what is monthly salary of a
GS 7? GS 8?

2.

3.

4.

5.

Col J.J. Coghlan

MEMBER'S PRINTED NAME

[Signature]

MEMBER'S SIGNATURE

OBJ 39A NO OBJ

TC

X

DC

X

APPELATE EXHIBIT CLXIII

APPELLATE AND POST-TRIAL RIGHTS

You are advised that your defense counsel (DC) is required by law to fully explain to you the following post-trial and appellate rights, and, that you have the right to request the military judge explain all or any portion of your appellate rights in open court prior to adjournment of your court-martial.

Record of trial (ROT)

A copy of the ROT will be prepared and given to you. You may request that your copy of the ROT be delivered to your DC.

Staff Judge Advocate or Legal Officer's Recommendation (SJAR)

If you received a punitive discharge or were sentenced by a general court-martial, the convening authority (CA)'s staff judge advocate or legal advisor will submit an SJAR to the CA. Before forwarding the SJAR and the ROT to the CA, this legal advisor will serve a copy of the SJAR upon your DC. A separate copy will be served on you. If it is impracticable to serve the SJAR on you for reasons including, but not limited to, your transfer to a distant place, your unauthorized absence, or military exigency, your copy will be forwarded to your DC. You may also request on the record at this court-martial or in writing that your copy be sent to your DC instead of yourself.

Submission of Matters to the Convening Authority

You have a right to submit matters to the CA before that officer takes action on your case. In this regard, you have the right to request deferment of any sentence to confinement. These matters must be submitted within 10 days after a copy of the authenticated ROT or, if applicable, the SJAR, is served on you or your DC, whichever is later. The CA may extend these periods, for good cause, for not more than an additional 20 days. Failure to submit matters within the time prescribed waives the right to submit matters later.

Action by the Convening Authority

The CA will take action on the sentence adjudged and may, in his discretion, take action on findings of guilty. ~~The action to be taken on the findings and sentence is within the~~ sole discretion of the CA and is a matter of command prerogative. The CA is not required to review the case for legal errors or factual sufficiency. In taking action on the sentence, the CA may approve, disapprove, commute, or suspend the sentence in whole or in part. **The CA may never increase the severity of the sentence.** The CA is not empowered to reverse a finding of not guilty; however, the CA may change a finding of guilty to a charge or specification to a finding of guilty to a lesser offense included within that charge or specification, may disapprove a finding of guilty and order a rehearing, or may set aside and dismiss any charge or specification.

Review

If you were tried by a special court-martial and your sentence, as finally approved by the CA, does not include a punitive discharge, your case will be reviewed under the direction of the staff judge advocate for the CA's superior general court-martial convening authority (GCMCA). You may suggest, in writing, possible legal errors for the judge advocate to consider and that judge advocate must file a written response to legal errors noted by you. After such review, and completion of any required action by the GCMCA, you may request the Judge Advocate General of the Navy (TJAG) to take corrective action. Such a request must be filed within two years of the CA's action, unless the time is extended for good cause.

If you were tried by a general court-martial and your sentence, as finally approved by the CA, does not include a punitive discharge or at least one year's confinement, your case will be forwarded to TJAG. You may suggest in writing, possible legal errors or other matters for consideration by TJAG. The ROT may be examined for any legal errors

and for appropriateness of the sentence and TJAG may take corrective action, if appropriate.

If your sentence, as finally approved by the CA, includes a punitive discharge (regardless of the type of court-martial), dismissal, a year or more of confinement, or death, your case will be reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for legal errors, factual sufficiency, and appropriateness of sentence. This review is automatic. Following this, your case could be reviewed by the United States Court of Appeals for the Armed Forces (CAAF), and finally it might be reviewed by the United States Supreme Court.

Waiver of Review

You may waive appellate review, giving up the foregoing rights, or you may withdraw your case from appellate review at a later time. Once you file a waiver of withdrawal, your decision is final and appellate review is barred. If you waive or withdraw appellate review, your case will be reviewed by a judge advocate for certain legal errors. You may submit, in writing, suggestions of legal errors for consideration by the judge advocate, who must file a written response to each. The judge advocate's review will be sent to the GCMCA for final action. Within two years after such final action, you may request TJAG to take corrective action in your case. The two year period may be extended for good cause. You have the right to the advice and assistance of counsel in exercising or deciding to waive your post-trial and appellate rights.

Right to Counsel

It is your DC's responsibility to represent you during the CA's action stage of your court-martial conviction. Your DC is responsible for examining the ROT for error and, where applicable, the SJAR for errors or omissions. It is your DC's obligation to advise and assist you in preparing matters for submission to the CA for consideration prior to action being taken on the ROT.

If your case is reviewed by NMCCA, military counsel will be appointed to represent you at no cost to you and, if you choose, you may engage a civilian counsel at no expense to the United States. If your case should be reviewed by CAAF or by the United States Supreme Court, you would continue to have the same appellate counsel rights before these courts.

Acknowledgment

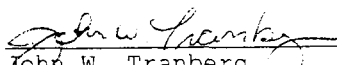
I acknowledge (1) that prior to adjournment of my court-martial, I was provided with the above written advice; (2) that I have read and I understand my post-trial and appellate rights; (3) that I discussed my rights with my DC prior to signing this form; and (4) that the military judge will discuss my appellate rights with me on the record prior to adjournment of the court, if I so desire.

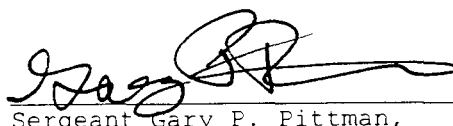
I specifically request that my copy of the ROT be delivered to:

_____ me. ☒ my counsel, John Tranberg.

I specifically request that my copy of the SJAR be delivered to:

_____ me. ☒ my counsel, John Tranberg.


John W. Tranberg
Civilian Defense Counsel
574 South Rancho Santa Fe Rd,
San Marcos, CA 92078


Sergeant Gary P. Pittman,
Sergeant
USMCR
Accused

APPELLATE EXHIBIT CLXIV

PAGE 2 OF 2

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - This form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (*chronology sheet*) of DD Form 490.

2. Judge advocate's review pursuant to Article 64(a), if any.

3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.

4. Briefs of counsel submitted after trial, if any (Article 38(c)).

5. DD Form 494, "Court-Martial Data Sheet."

6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.

7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (*unless included at the point of arraignment in the record*).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., *requests concerning delay, witnesses and depositions*).

14. Records of former trials.

15. Record of trial in the following order:

a. Errata sheet, if any.

b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.

c. Record of proceedings in court, including Article 39(a) sessions, if any.

d. Authentication sheet, followed by certificate of correction, if any.

e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

f. Exhibits admitted in evidence.

g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (*real or documentary*), and briefs of counsel submitted at trial.